

**Minutes**  
**State Election Commission Meeting**  
**May 13, 2013**

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The State Election Commission meeting was called to order by Chairman Kent Younce at 12:15 p.m., Central Standard Time May 13, 2013. The following members and staff were present: Commissioners Blackburn, DuBois, Head, Wallace and Wheeler; Coordinator of Elections Mark Goins; Assistant Coordinator of Elections Beth Henry-Robertson; Elections Attorney Andrew Dodd; HAVA Coordinator Wayne Pruett and Kathy Summers, Elections Specialist.

Motion was made, seconded and unanimously approved to adopt the minutes from April 1, 2013.

Motion was made, seconded and unanimously approved to adopt the minutes from April 15, 2013, telephonic meeting.

Pursuant to T.C.A. § § 2-12-101 and 2-12-106, motion was made, seconded and unanimously approved to accept the nominations for county election commission appointments as submitted by commission members and to remain open until the close of business (4:30 p.m. Central Standard Time). **(See attached list of appointments made.)**

Motion was made, seconded and unanimously approved to reappoint those nominees that were appointed April 1, 2013 and April 15, 2013, but failed to return their oaths. **(See attached report labeled Awaiting Oath Letters for those reappointed.)**

**Old Business**

- **Davidson County Review Presentation** – Chairman Younce stated in light of the action taken by the Davidson County Election Commission on May 9, 2013, he does not think the State Election Commission should proceed any further with the Davidson County Review. Chairman Younce allowed two (2) individuals to speak from the audience regarding the Davidson County Election Commission. Attached is a transcription of former Davidson County Election Commissioner Steve Abernathy and Davidson County Election Commissioner Jim Gotto's statements.

Commissioner Wheeler made a motion to make the Davidson County Review a part of the State Election Commission minutes. Commissioner Blackburn seconded the motion. The motion was unanimously approved. **(Davidson County Election Commission Review is attached.)**

Commissioner Wallace made a motion to transcribe the comments made by former Davidson County Election Commissioner Abernathy and Davidson County Election Commissioner Gotto as a part of the minutes. Commissioner Wheeler seconded the motion. The motion was unanimously approved. **(Transcribed statements attached.)**

### New Business

- **Election of Chairman** – A motion was made, seconded and unanimously approved to elect Commissioner Wallace as Chairman of the State Election Commission for the term June 1, 2013 through May 31, 2014.
- **Election of Secretary** – Motion was made, seconded and unanimously approved to elect Commissioner Duckett as Secretary of the State Election Commission for the term June 1, 2013 through May 31, 2014.
- **Sequatchie County – Linda Pittman Tate's request to be excused from the June seminar. (See attached request from AOE.)** A motion made to excuse Linda Pittman Tate from the June seminar.
- **Lawrence County – June Davis' request to be excused from the June seminar. (See attached request from AOE.)** A motion made to excuse June Davis from the June seminar.
- **Houston County – Gay Robinson's request to be excused from the June seminar. (See attached request from AOE.)** A motion made to excuse Gay Robinson from the June seminar.

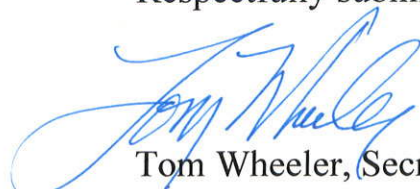
### Coordinator Update

- Coordinator Goins spoke regarding the upcoming TACEO seminar and conference. The conference will be held in Memphis, June 16-19 at the Downtown Marriott.

The next meeting is June 10, 2013. The meeting will be held in the William R. Snodgrass – Tennessee Tower, Conference Room D - 3<sup>rd</sup> at 12:00 Noon Central Standard Time.

Motion was made to adjourn, and there being no further business to come before the commission at this time, the meeting was adjourned.

Respectfully submitted,

  
Tom Wheeler, Secretary *Actual*  
State Election Commission

**Statement of Former Davidson County Election Commissioner Steve Abernathy:**

Steve Abernathy, former Davidson County Election Commissioner. I appreciate the opportunity to speak. I'll try to keep my comments short. What I want to share today is my opinion on a lot of these issues in the state report. I interviewed with Coordinator Goins and gave him a lot of information during the interview and I appreciate him including the attachments I have given him subsequently, but some of the comments I have made prior to that explaining those attachments were not included. And I sent you a copy, I realize I didn't get in until late last night, so if you have questions later, feel free to call me or email me and I'll respond to it.

Based on my knowledge and experience of the election process, I do believe that the final report from the state coordinator's office is incomplete; there is a lot of information that could have been included. It does include some inaccurate conclusions and assumptions and it could be considered unfairly biased or even personal, but again that's my opinion.

I went ahead and sent you all a copy of my comments so you have that. While the state report is very lengthy and detailed, as mentioned earlier Mr. Tieche has already been dismissed, so I didn't know whether you would want to hear from me or not, I do appreciate the opportunity.

Look at page two of the state report, talking about the 2012 election cycle as a success. It says that comment was attributed to me. I don't think that is proper context. Saying that, as you remember, I came and spoke in January about the perfect storm, which was all the issues the Davidson County election commission was facing. That is included in attachment four and I would like to ask you to review that and you'll see why I said it was a success. I didn't say it was a complete success, I said we did fairly well when you consider everything we were facing. And we did get our last voter through at around 8:55 on November the sixth, and that was significantly earlier than we had in 2008.

Implementation of poll books. I was quoted in 99.8 percent accuracy. I was talking about the electronic poll books and I also mentioned if you had to hire and train 360 temporary employees and not get a trial base start, you know, it's one day, you either make it or brake it. And also trying a new process and a piece of new equipment and serving 12,000 customers and having them open from six o'clock in the morning to probably 8 o'clock at night. I don't know of any other government agency that can do that with their employees and that is the point I was making.

Page three of the report talks about where I said "Respectfully, I am asking you as nicely as possible to drop this issue." That is a comment I made to Commissioner Heim. You know, I sent this at about six o'clock in the morning after we had had about a half-dozen emails back and forth. My advice to myself is to not send an email at that time until you've had a cup of coffee.

Page three, early voting in the presidential primary, you know the thing we all appeared before you all in May. You know, a mistake was made, we should have been open on Saturday. You know, you have to remember this, that was the same thing that was done in Davidson County under the prior Administrator of Elections. It was in violation of state law, and Albert admitted it, Albert was reprimanded and you would think that would've been it, but it wasn't. It continued to be the lead item in every news story in the news reported in the Tennessean or in the news at night. And my experience is, if someone makes a

mistake, you identify it, someone takes responsibility for it, and then you drop it. It keeps being brought up and I think that's unfortunate.

The comment was made on page five that, electronic poll books are designed to speed up the sign-in process by allowing a voter to be looked up by name. That's an inaccurate statement; we do that with paper that is not why they were designed. They were designed because they eliminated a step in the process and they improved and speed up the election process. It also prevents voter fraud. It keeps people from voting twice in an election.

It's another example of comments that are in the report that are not necessarily accurate. They're a viewpoint but don't include the rest of the story and that is something that I think is troubling as you go through the entire report.

You know we have had a lot of comments have been made that the precinct registrars in this State didn't ask the voters to vote. Well the truth is, you move to Tennessee and the election law book, it doesn't say the precinct registrar doesn't have to ask the voter to vote, it says the voter must declare, and that's also on the website.

But our precinct registrars are supposed to ask. The difference was when we changed the process, that was something that had to be done by the application clerk prior to that, and with the electronic poll books in, we now moved that function to the precinct registrar. We trained them on the book and also on the photo ID and quite frankly it did address some of the issues about how a voter might feel uncomfortable verbally saying if they were going to vote Democrat or Republican. And that's the number one problem.

You know, I've heard a lot about House District 50 and 58, that the electronic poll books caused problems and well, I looked it up and House District 50 that it was one Democrat running and that was Bo Mitchell, so if they got down to the Republican, or had people who were wanting to vote for the Republican candidates, that wouldn't have stopped him from being elected, there was only one candidate running on the Democratic side.

And in District 58, there wasn't a Republican candidate at all. Those were the two races that were pointed out in the report, that that is where the electronic poll books were causing problems. I don't see how it can cause problems in a situation where Democrats are running unopposed or there is not a Republican candidate.

On page seven there are several comments from poll officers. And the thing I'll point out and the point I would like to make is that that comes in at the end of a fourteen hour day after they have worked and the focus of their feedback was for them to give us suggestions for improvement. So they are tired and they are telling you what things went wrong and giving some ideas for improvement, to just include the negative ones in the report, I think was an example of bias. There were also positive comments made in those and an email they weren't recorded.

Lastly, and I'm going to wrap it up and turn it to Mr. Gotto, look at my letter that was sent to Coordinator Goins that was dated on September 13, that was about that electronic poll book issue. Yes, I was the one person that voted we needed to use them, even though we had some stumbles in the August primary. You know, November wasn't the primary so that issue would come up. The electronic poll books would have allowed us to re-deploy between 180 to maybe 250 poll workers into positions like precinct registrars and

to change of address officers. That would have greatly relieved some of the work volume that some of our poll officers had that day and allowed the process to work a lot smarter—a lot smoother, excuse me. And that is the point I was trying to make when, you know the four administrators that did not vote to rescind that day, their comments were that it doesn't matter what we do here, because the state election coordinator has said we already can't use them. The reality is that the state coordinator didn't have that authority; like you were talking about a minute ago, Kent Younce, you know, the state office can't tell you how to run the election. They can give you an interpretation of law, but you've got to run the election based on what is best in your county. That is why there are five commissioners in each county versus the number of people in the state election commission.

If you read the letter, you will see that a lot of the things that I forecasted would happen if we didn't have electronic poll books actually did happen. And I was trying to do my best to get that information out to you. I ask that you look at that, it is in the attachments I gave you. You will see that they need to be used.

Two of the Democratic commissioners that voted no to use the electronic poll books both approached me after the election and said, "we made a mistake, we should have used the electronic poll books." A.J. Starling, one of those commissioners, has commented that he cleaned up a line that was backed up about twenty feet in about five minutes and said how it helped us to do that.

The reason I bring that up today—I am no longer commissioner, it is not my fight anymore—but the request to use electronic poll books is sitting up here on Coordinator Goins' desk for him to make an approval or denial that the Davidson County Election Commission to use the electronic poll books. They need to be used. Yes, there was a stumbling out of the gate, that's why we call it a trial. But I know it will help the elections in the future.

In summary, that's some of the examples of some of the areas using incorrect information and what I consider incorrect statements. The report did not include everything that was submitted to him. That is their choice, you know, Coordinator Goins let us know that we could submit it to him and he would make a judgment of whether to include it in the final report. It was an honor to serve as commissioner I enjoyed the time there, did the best job I could. And I hope the new commission is successful in being able to recruit poll workers. That is one thing that you know and the last thing that I will say. If I can say one last thing. When I joined the commission in April of 2008, the percentage of Democrat poll workers to Republican was 80 to 20. We couldn't get enough Republican poll workers. Ray Barrett, who was administrator of elections at the time, told us we can't get Republicans to work. We did make progress, we didn't get nearly what we wanted to 50-50, which the report's got a lot of statistics on that, but we did get to about 65-35. And we did that in a four-year period. If you all have some suggestions on how to recruit some Republican poll workers, I know the new commission would love to hear it. We did the best we could in the time frame we had. Again, thank you for the time to comment.

#### **Statement of Davidson County Election Commissioner Jim Gotto:**

I am Jim Gotto, currently the commissioner of the Davidson County Election Commission. Good afternoon Commissioner, Mr. Goins, Mr. Dodd and attorney, I am sorry I don't know your name. But good afternoon to everybody. I'm here to talk about the issues that have come up as far as the Davidson County

election goes, because even though I wasn't there when it happened, I read the report and I have said all along I am absolutely agreeing that there are issues with the Davidson County Election Commission that need to be addressed. As far as what actions needed to be taken, I am still not sure what action needs to be taken. I was the dissenting vote to terminate Mr. Tieche on Friday—or Thursday. That that was not necessarily an indication of what my final decision would have been. But my concern is with the process that has taken place here, and with the personal nature with which this has taken off.

Mr. Goins and I have had this conversation, and if you look at Mr. Goins' report, there are parts of his report where it gets really personal, not just with that the former administrator Tieche, but also with former commissioner Abernathy. And I don't think that in our world there is any place for personal attacks in what's supposed to be a professional document.

There's a lot of data in that document that does point out some issues and things that happened that have to be addressed, however, it is inappropriate to take a personal approach to that.

I am sure you know the history of the Davidson County Election Commission, if you go back there was a huge, huge issue with one of the three former Republican commissioners there. And that took on a very personal nature as well, both among the commissioners, and with at least of the commissioners and former administrator Tieche. And it appears to me that this agenda has been brought into this new commission with Chairman Buchanan. That is unfortunate, because the Davidson County Election Commission needs to be unified. It needs to be a unifying force, not just with Republicans in Davidson County but with Democrats as well, with any voters, with independents. And I think that what we have done, with what has been done is that we have not settled down. In truth, I think we're more restless, the voters are more restless, and I still don't think there is a lot of trust in the Davidson County Election Commission. Not with any of the voters, neither with Republican, Democrat or Independent.

It was my impression that when all three of the Republican commissioners were replaced that we were to come in and have a calming effect and get things back under control. One of the very first things that the current chairman; and I am not saying anything behind his back because this was all in the letter that I read at the meeting last Thursday. One of the first things that he did he ran out and met with former Administrator Tieche and threatened him with the meeting that we had Thursday to try to coerce him into resigning. And I just don't think that was appropriate.

Number one, I don't think it was appropriate to do that and number two, it certainly wasn't appropriate for an election commission chairman to go out and take that kind of action without consulting the other commissioners. He did that one-sided, he did it on his own without the other commissioners. I didn't know about it and if any of the other commissioners knew about it, I suppose that would be a violation of the sunshine law. But as far as I know, they didn't.

As a result of all this, throughout the process, I felt very strongly that this commission had asked for the review. And quite frankly I wanted your input on that review and on those issues and what you thought. I know there were issues, there is no disagreeing with the fact that there have been issues. You asked for the report, I would have liked to have your input and your feedback and let's decide and let the process play out and have the election commission of Davidson County decide, based on all of the input, what the best steps would be to take and take care of it.

I want to go back and reiterate this I did not resign from the Davidson County Election Commission because I disagreed with firing Albert Tieche. My mind was not made up at that point whether he should be retained or not. I did make a decision to resign because I thought the process was flawed, I thought it was unfair that Mr. Tieche was treated awful. In both meetings, the meeting with review of Mr. Goins' report and also with the meeting on Thursday, I have seen some hostile witnesses treated with more respect than Mr. Tieche was treated with. And there is just no place for that. There is absolutely no place for that.

And when I went into the meeting on Thursday, I hadn't decided whether I was going to submit my letter to resign or not. But after the way he was treated, and the disrespect that was shown him, I decided I just couldn't stay. I wanted to say what I had written in the letter and I knew that once I did that, my effectiveness as commissioner would be less than what it should be and there would be a sense of unrest and conflict there in the commission and what I didn't feel like that was in the best interest.

That is why I took the action I did. That is why I am very concerned with how this process has played out. I will be glad to answer any questions, but otherwise, that is all my comments.

# Awaiting Oath Letters

13-May-13

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|  | PARTY | STATUS | APPOINTMENT | RE-APPOINTMENT |
|--|-------|--------|-------------|----------------|
|--|-------|--------|-------------|----------------|

## Benton

(D) Greg Duckett  
(R) Jimmy Wallace

|                     |   |          |          |
|---------------------|---|----------|----------|
| James Britt Johnson | R | 4/2/2007 | 4/1/2013 |
|---------------------|---|----------|----------|

## Bradley

(D) Tom Wheeler  
(R) Judy Blackburn

|              |   |           |          |
|--------------|---|-----------|----------|
| Travis Henry | R | 2/13/2012 | 4/1/2013 |
|--------------|---|-----------|----------|

## Cheatham

(D) Tommy Head  
(R) Tom DuBois

|              |   |          |           |
|--------------|---|----------|-----------|
| Elke McLeroy | R | 4/6/2009 | 4/15/2013 |
|--------------|---|----------|-----------|

## Claiborne

(D) Tom Wheeler  
(R) Kent Younce

|               |   |          |          |
|---------------|---|----------|----------|
| Terry England | R | 4/6/2009 | 4/1/2013 |
|---------------|---|----------|----------|

## Gibson

(D) Greg Duckett  
(R) Jimmy Wallace

|             |   |          |          |
|-------------|---|----------|----------|
| Sam Gregory | R | 4/6/2009 | 4/1/2013 |
|-------------|---|----------|----------|

|                |   |           |          |
|----------------|---|-----------|----------|
| Dwight Reasons | R | 8/19/2003 | 4/1/2013 |
|----------------|---|-----------|----------|

## Jefferson

(D) Tom Wheeler  
(R) Judy Blackburn

|                    |   |          |           |
|--------------------|---|----------|-----------|
| Phyllis F. Finchum | R | 4/3/1995 | 4/15/2013 |
|--------------------|---|----------|-----------|

Oath Letters Not Returned: 7



# Holdover Status

13-May-13

|                 |                          | Appointment | Reappointment |
|-----------------|--------------------------|-------------|---------------|
| <b>Benton</b>   |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Jimmy Wallace            |             |               |
| D               | Ronnie Pruiett           | 6/17/2008   | 4/11/2011     |
| D               | Dinah S. (Diane) Latimer | 10/8/2012   | 10/8/2012     |
| <b>Carroll</b>  |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Jimmy Wallace            |             |               |
| D               | Nellie M. Hale           | 4/4/2005    | 9/21/2011     |
| D               | Michael Corrado          | 4/1/1985    | 9/21/2011     |
| <b>Chester</b>  |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Jimmy Wallace            |             |               |
| D               | John Pipkin              | 9/21/2011   | 9/21/2011     |
| D               | Carolyn Thomas           | 8/18/2009   | 9/21/2011     |
| <b>Fentress</b> |                          |             |               |
| D               | Tom Wheeler              |             |               |
| R               | Kent Younce              |             |               |
| D               | Rodney W. Foy            | 9/17/2002   | 4/4/2011      |
| D               | Yvonne McDaniel Gernt    | 5/9/2011    | 5/9/2011      |
| <b>Gibson</b>   |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Jimmy Wallace            |             |               |
| D               | Robert S. Phelan         | 4/3/1995    | 5/27/2009     |
| D               | Kathleen Smith           | 6/22/2007   | 5/27/2009     |
| <b>Giles</b>    |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Tom DuBois               |             |               |
| D               | Henry A. Inman           | 4/3/1995    | 1/9/2012      |
| D               | Judy C. Mitchell         | 2/19/2002   | 1/9/2012      |
| R               | David E. Rackley         | 4/6/2009    | 4/4/2011      |
| R               | William C. Callahan      | 10/28/1996  | 4/4/2011      |
| R               | Annelle Guthrie          | 2/13/2012   | 2/13/2012     |
| <b>Houston</b>  |                          |             |               |
| D               | Greg Duckett             |             |               |
| R               | Tom DuBois               |             |               |

|                            |                      | Appointment | Reappointment |
|----------------------------|----------------------|-------------|---------------|
|                            | D Dewain Pryor       | 6/22/2007   | 7/11/2011     |
|                            | D Nora DeJuliis      | 10/20/2009  | 7/11/2011     |
|                            | R Annette Pulley     | 4/6/2009    | 4/4/2011      |
|                            | R Ann Young          | 10/19/2004  | 4/4/2011      |
|                            | R John S. Paffrath   | 4/15/2003   | 4/4/2011      |
| <b>Humphreys</b>           |                      |             |               |
|                            | D Greg Duckett       |             |               |
|                            | R Tom DuBois         |             |               |
|                            | D Jess S. Bowen, III | 1/14/2003   | 6/18/2012     |
|                            | D David Westbrook    | 5/14/2012   | 5/14/2012     |
| <b>Lawrence</b>            |                      |             |               |
|                            | D Greg Duckett       |             |               |
|                            | R Tom DuBois         |             |               |
|                            | D Ruby Belew         | 8/19/2008   | 7/11/2011     |
|                            | D Johnny Lyles       | 5/17/2005   | 7/11/2011     |
| <b>Morgan</b>              |                      |             |               |
|                            | D Tom Wheeler        |             |               |
|                            | R Kent Younce        |             |               |
|                            | D Vera Scarbrough    | 4/3/1995    | 4/4/2011      |
|                            | D James T. Jones     | 6/22/2007   | 4/4/2011      |
| <b>Obion</b>               |                      |             |               |
|                            | D Greg Duckett       |             |               |
|                            | R Jimmy Wallace      |             |               |
|                            | D John Algee         | 2/19/2003   | 8/8/2011      |
|                            | D Dave Frankum       | 10/19/2004  | 8/8/2011      |
| <b>Perry</b>               |                      |             |               |
|                            | D Greg Duckett       |             |               |
|                            | R Tom DuBois         |             |               |
|                            | D Margaret S. Rainey | 12/7/2009   | 5/9/2011      |
|                            | D Barbara Kirk       | 1/14/2003   | 5/9/2011      |
| <b>Weakley</b>             |                      |             |               |
|                            | D Greg Duckett       |             |               |
|                            | R Jimmy Wallace      |             |               |
|                            | D Raymond Stevenson  | 12/5/2011   | 12/5/2011     |
|                            | D Beau Pemberton     | 5/28/2009   | 8/8/2011      |
| <b>Total Holdovers: 32</b> |                      |             |               |

# Vacant Status

13-May-13

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## Bradley

D Tom Wheeler  
R Judy Blackburn

R

## Haywood

D Greg Duckett  
R Jimmy Wallace

D

## Moore

D Tommy Head  
R Tom DuBois

D

## Wilson

D Tommy Head  
R Jimmy Wallace

D

**Total Vacancies: 4**

# New Appointment Status

13-May-13

|                  |                                  | Appointment |
|------------------|----------------------------------|-------------|
| <b>Benton</b>    | D Greg Duckett / R Jimmy Wallace |             |
|                  | R James Britt Johnson            | 5/13/2013   |
| <b>Bradley</b>   | D Tom Wheeler / R Judy Blackburn |             |
|                  | R Travis Henry                   | 5/13/2013   |
|                  | R Duane Gilbert                  | 5/13/2013   |
| <b>Cheatham</b>  | D Tommy Head / R Tom DuBois      |             |
|                  | R Elke McLeroy                   | 5/13/2013   |
| <b>Claiborne</b> | D Tom Wheeler / R Kent Younce    |             |
|                  | R Terry England                  | 5/13/2013   |
| <b>Fentress</b>  | D Tom Wheeler / R Kent Younce    |             |
|                  | D Yvonne McDaniel Gernt          | 5/13/2013   |
|                  | D Rodney W. Foy                  | 5/13/2013   |
| <b>Gibson</b>    | D Greg Duckett / R Jimmy Wallace |             |
|                  | R Sam Gregory                    | 5/13/2013   |
|                  | R Dwight Reasons                 | 5/13/2013   |
| <b>Houston</b>   | D Greg Duckett / R Tom DuBois    |             |
|                  | R Ann Young                      | 5/13/2013   |
|                  | R Jay Reedy                      | 5/13/2013   |
|                  | R Annette Pulley                 | 5/13/2013   |
| <b>Jefferson</b> | D Tom Wheeler / R Judy Blackburn |             |
|                  | R Phyllis F. Finchum             | 5/13/2013   |
| <b>Moore</b>     | D Tommy Head / R Tom DuBois      |             |
|                  | D Eddie Stone                    | 5/13/2013   |
| <b>Morgan</b>    | D Tom Wheeler / R Kent Younce    |             |
|                  | D Vera Scarbrough                | 5/13/2013   |
|                  | D Ronnie Troutt\                 | 5/13/2013   |
| <b>Wilson</b>    | D Tommy Head / R Jimmy Wallace   |             |
|                  | D Don Simpson                    | 5/13/2013   |

Total New Commissioners: 17

**REVIEW OF THE DAVIDSON COUNTY ELECTION COMMISSION  
AS CONDUCTED BY THE COORDINATOR OF ELECTIONS**

**PRESENTED TO THE STATE ELECTION COMMISSION ON MAY 13, 2013**

**INTRODUCTION**

The most visible function of a county election commission is to conduct elections. Election commissions work daily to prepare for the election cycle. During 2012, election commissions across the state had the opportunity to showcase their competence and preparation for three separate elections.

Election commissions are judged by the elections they conduct. Voters expect and deserve the election commission to conduct a well-managed election. An election is like a football championship game. You plan and prepare in the off season and execute at game time. At a minimum, the operation of a successful election requires adequate poll officials, supplies, and training. Of course, numerous roles and responsibilities are required behind the scenes over the course of several months to make elections run smoothly.

With that in mind, the Davidson County Election Commission held three county-wide elections in 2012, and all three elections had widely reported issues. Based on these reports, the State Election Commission unanimously and on a bipartisan basis requested the Coordinator of Elections to conduct a review of the 2012 election cycle in Davidson County.

It is our opinion that the 2012 election cycle was marred by a series of avoidable errors and violations of law in Davidson County. While minor mistakes are understandable, our review uncovered an unacceptable pattern of serious errors. These errors were sometimes repeated, often at a cost to taxpayers, and have led to an erosion of confidence in the Davidson County Election Commission.

**BACKGROUND**

The Davidson County Election Commission is one of ninety-five (95) county election commissions in operation across the State of Tennessee. County election commissioners are appointed by the State Election Commission pursuant to Tenn. Code Ann. § 2-12-101. Their duties are generally outlined by Tenn. Code Ann. § 2-12-116.

Among these duties is the appointment of an administrator of elections, who serves as the chief administrative officer of the commission and is responsible for its daily operations. Duties of the administrator are enumerated in Tenn. Code Ann. § 2-12-201.

At the time this review was conducted, the members of the Davidson County Election Commission were Steve Abernathy, Eddie Bryan, Lynn Greer, Patricia Heim, and A.J. Starling, and the administrator of elections was Albert Tieche.

Four new commissioners were appointed in April 2013. Ronald Buchanan, Jim Gotto, Tricia Herzfeld, and Jennifer Lawson joined A.J. Starling, who was reappointed. On May 9, 2013, the commission voted 4-1 to terminate the employment of Administrator Tieche. The commission has submitted a response to this review, which is attached as Exhibit 1.

## **AUTHORITY AND SCOPE**

This review was conducted pursuant to Tenn. Code Ann. § 2-11-202, which grants the Coordinator the authority to “[r]eview the county election commissions in the administration of election laws to include, but not limited to, procedures for voter registration, list maintenance, financial records, election expenses, petitions, poll officials, absentee voting, ballot boxes, voting systems, minutes, certification of election results, and election results tabulation process.”

The State Election Commission requested that the Coordinator of Elections conduct this review at its meeting on November 13, 2012. The State Election Commission reconsidered its action pursuant to a request by the Davidson County Election Commission on January 14, 2013, but unanimously reaffirmed their desire that the review should proceed.

Several staff members have worked on this review, and we have reviewed the Davidson County Election Commission for the period of January 1, 2012, through January 31, 2013. Our scope included a review of the administration of election laws during the 2012 election cycle, including the March 6 Presidential Preference Primary, August 2 primary, and November 6 Presidential elections.

Over the course of our review, we have interviewed more than twenty (20) current and former employees of the Davidson County Election Commission, many of whom are outstanding and competent staff members who care about the electoral process. These interviews were primarily conducted between January 29 and February 1, 2013. Additionally, we extended an invitation to each of the current commissioners to share their feedback regarding the 2012 election cycle. Four out of five commissioners accepted our offer and were interviewed.

We are aware that the Davidson County Election Commission has been audited by the Metro Office of Internal Audit. We worked with the Office of Internal Audit in an attempt to ensure that the subject matter of our review did not overlap with their audit to the extent possible. The review of the Davidson County Election Commission was separate in scope, as referenced on page 4 of the final Metro audit report, which states, “A separate report addressing specific concerns not included in the scope of this audit will be forthcoming from the Coordinator of Elections.” [See Exhibit 2.]

## **Summary of Interviews with Election Commission Members**

Our interviews with four members of the commission are summarized below. Chairman Greer chose not to interview with our office, but has submitted a written statement, which is attached as Exhibit 3.

Commissioner Abernathy was the only commissioner who stated the 2012 election cycle was a success for Davidson County. He maintains that Davidson County’s implementation of electronic poll books in August had an accuracy rating of 99.8%. He is quoted in the newspaper saying, “I challenge

any other government agency or department to match that level of performance,” and he echoed that statement in our discussions. His response is attached as Exhibit 4.

Commissioner Heim expressed frustration with her role on the commission. In spite of her sixteen years of experience as either a poll official or election commissioner, she feels her suggestions were ignored. A specific example arose in advance of the November election, during which Commissioner Heim suggested that there should be additional early voting hours to serve Davidson County’s voters, but Chairman Greer refused to call a meeting to consider her proposal. Furthermore, Commissioner Abernathy stated in an e-mail, “Respectfully, I am asking you as nicely as possible to drop this issue.” [Note: This is not a finding, but only serves as an example of Commissioner Heim’s frustration. The e-mails containing the full discussion are included in Exhibit 4.]

Commissioner Starling questioned who was actually the “captain” of the ship—Administrator Tieche or Commissioner Abernathy. Either way, he was not pleased with the administration of the three county-wide elections held in 2012. He also expressed concerns that some commissioners receive more information from Administrator Tieche about daily operations than others.

Commissioner Bryan expressed disappointment in personnel changes that have been made, and believes the changes have had a negative effect on the performance of the elections.

## **FINDINGS**

### **Early voting schedule set by administrator of elections violated Tenn. Code Ann. § 2-6-103**

Ninety-four (94) counties were open for early voting on Saturday, February 18, 2012. Davidson County remained closed in violation of Tenn. Code Ann. § 2-6-103.

In 2010, two (2) administrators violated the same statute. Shortly after the violations, one administrator was terminated, and the other administrator retired. The 2010 violations were published extensively in the media and discussed at state training seminars. In 2011, all county election commissions were provided a timeframe reference manual for the 2012 election cycle by the state. The reference manual detailed dates for voting early, including Saturday, February 18, 2012. The election calendar was posted on the Secretary of State’s website in 2011 and was available throughout the 2012 election cycle.

On October 26, 2011, the election commission voted to be open for early voting on Saturday, February 18, 2012. However, the office was closed for early voting on Saturday, February 18, 2012. Administrator Tieche, citing past policy, stated the reason for being closed was that the office viewed that Saturday as a state holiday to observe President’s Day, which officially fell on Monday, February 20, 2012. Despite being closed Saturday for early voting, the office opened to conduct poll worker training. One person at the polling location has stated he turned away voters who showed up to vote that day.

The State Election Commission decided at its meeting on May 14, 2012, to reprimand Administrator Tieche for not complying with the law. Administrator Tieche was also sent a warning letter by the Davidson County Election Commission Chairman Greer. The pertinent language of the Chairman’s reprimand was:

It is now clear that we were required by law to be open on February 18 and your decision not to do so was incorrect. Such a situation cannot happen again; as the AOE it is your duty and responsibility to follow all applicable laws and to carry out the decisions of the Davidson County Election Commission. Any action to the contrary in the future could cause severe disciplinary actions to be considered by the Commissioners.

The State Election Commission took no disciplinary action against the members of the county election commission because the schedule they had adopted on October 26, 2011, complied with the law.

#### **Payment made to poll worker who did not work**

During the course of our review, questions were raised about the process for identifying and paying poll workers during the March 6 Presidential Preference Primary, which is funded by the state, pursuant to Tenn. Code Ann. § 2-12-109(d).

A former employee of the Davidson County Election Commission submitted the name of an individual on the Election Day payroll sheet for payment, despite the person having not worked on March 6. The poll worker was apparently a friend of the employee in charge of compiling the payroll. Administrator Tieche stated he did not investigate further whether this was an isolated issue by comparing the payroll with poll worker sign-in sheets.

At some point, Administrator Tieche requested the money back from the person who did not work. We have been informed the person did reimburse the county for the improper payment. The Davidson County Election Commission needs to reimburse the state for those funds.

The state recommends that the Davidson County Election Commission review the entire March payroll to determine if any other improper payments were made.

#### **Davidson County Election Commission deploys electronic poll books set to preselect a partisan primary ballot**

The Davidson County Election Commission utilized electronic poll books (EPBs) in sixty (60) precincts on August 2.

At winter training seminars held in late 2011 and early 2012, county election commissions were advised that the Coordinator did not recommend the implementation of EPBs after the March Presidential Preference Primary. The Coordinator is not opposed to the use of EPBs, but was concerned that counties would not have time to adequately train poll officials to properly use them in the high-turnout races in 2012.

While Davidson County had initially sought to implement the EPBs in all of their one hundred sixty (160) precincts, the Coordinator restricted their usage to sixty (60) precincts. In a letter to Coordinator Goins, Administrator Tieche represented his training would be "hands-on training in which each poll official will work with an actual unit during the training. Officers of the precincts in which the Express Poll 5000 will be deployed will be required to demonstrate *proficiency* with the EPBs." (Emphasis added.)



Electronic poll books are designed to speed up the sign-in process by allowing a voter to be looked up by name. The electronic poll book then sends an application for ballot to a printer for the voter to sign and present to the machine operator. County election staff appreciates that EPBs can expedite the voter history posting process after the election, since EPBs are able to record what type of history a voter should receive and store that information in an electronic database.

In a primary election, the poll worker must ask the voter in which primary, if any, the voter wishes to vote. That choice is recorded by selecting either a partisan ballot or general election ballot on a selection screen on the electronic poll book. Failure to properly train how to manage this screen was the source of Davidson County's EPB problems in August.

Upon loading the primary selection screen, Davidson County's EPBs were programmed to preselect a primary ballot. In effect, if the poll worker failed to ask in which primary the voter wished to participate, or if the poll worker erroneously skipped the screen, the voter would be given an application for the preselected primary ballot and have specific primary voter history recorded as reflected on the application. While some voters ultimately may have received the correct ballot by pointing out the error to a machine operator, unless they were sent back to the EPB for a corrected application, the voter's history would not accurately reflect the intention of the voter.

Davidson County's EPB programming and failure to properly train led to several errors, including a prominent local politician receiving incorrect voter history. Additionally, at precinct 501, one hundred percent (100%) of the voters were issued applications and received voter history for one specific primary. As a result, at least eighty-nine (89) of the one hundred fourteen (114) voters at the precinct were given incorrect voter history.

In forty-four (44) out of a total of sixty (60) EPB precincts (73.3%), there were anomalies involving either ballot or voter history errors, as seen in the data below provided by the Davidson County Election Commission. Former Chairman Greer has stated publicly that the errors were a result of a poll worker comprehension problem, but we believe this many errors demonstrate a deficiency in proper training on the usage of the EPBs.

The chart below highlights the anomalies in forty-four (44) precincts:

| Prec | House Dist | Rep Ballots Cast | Rep Voter History | Dem Ballots Cast | Dem Voter History | Gen Ballots Only Cast | Gen Only Voter History | Total Ballots Cast | Total Votes Posted on History | Difference Ballots vs History | D History vs Ballots Cast |
|------|------------|------------------|-------------------|------------------|-------------------|-----------------------|------------------------|--------------------|-------------------------------|-------------------------------|---------------------------|
| 105  | 54-58      | 6                | 6                 | 218              | 217               | 1                     | 3                      | 225                | 226                           | -1                            | -1                        |
| 204  | 58         | 0                | 5                 | 144              | 138               | 0                     | 0                      | 144                | 143                           | 1                             | -6                        |
| 301  | 50         | 150              | 149               | 67               | 70                | 0                     | 0                      | 217                | 219                           | -2                            | 3                         |
| 304  | 54         | 103              | 103               | 291              | 290               | 3                     | 4                      | 397                | 397                           | 0                             | -1                        |
| 306  | 50-54      | 42               | 49                | 111              | 104               | 0                     | 0                      | 153                | 153                           | 0                             | -7                        |
| 404  | 53-56      | 187              | 186               | 93               | 93                | 0                     | 0                      | 280                | 279                           | 1                             | 0                         |
| 501  | 58         | 22               | 114               | 89               | 0                 | 3                     | 0                      | 114                | 114                           | 0                             | -89                       |
| 503  | 54         | 15               | 16                | 58               | 58                | 3                     | 3                      | 76                 | 77                            | -1                            | 0                         |
| 504  | 51-58      | 5                | 8                 | 89               | 85                | 1                     | 1                      | 95                 | 94                            | 1                             | -4                        |
| 601  | 51-52-58   | 28               | 30                | 144              | 140               | 21                    | 23                     | 193                | 193                           | 0                             | -4                        |
| 602  | 51-52      | 95               | 96                | 301              | 301               | 6                     | 6                      | 402                | 403                           | -1                            | 0                         |
| 605  | 51-54      | 35               | 32                | 158              | 160               | 46                    | 46                     | 239                | 238                           | 1                             | 2                         |
| 703  | 51-54      | 12               | 24                | 173              | 161               | 4                     | 5                      | 189                | 190                           | -1                            | -12                       |

| Prec | House Dist | Rep Ballots Cast | Rep Voter History | Dem Ballots Cast | Dem Voter History | Gen Ballots Only Cast | Gen Only Voter History | Total Ballots Cast | Total Votes Posted on History | Difference Ballots vs History | D History vs Ballots Cast |
|------|------------|------------------|-------------------|------------------|-------------------|-----------------------|------------------------|--------------------|-------------------------------|-------------------------------|---------------------------|
| 803  | 51-54      | 110              | 111               | 141              | 140               | 4                     | 4                      | 255                | 255                           | 0                             | -1                        |
| 903  | 51         | 115              | 123               | 188              | 200               | 2                     | 5                      | 305                | 328                           | -23                           | 12                        |
| 1005 | 51-54      | 43               | 44                | 61               | 60                | 0                     | 0                      | 104                | 104                           | 0                             | -1                        |
| 1102 | 60         | 259              | 259               | 124              | 123               | 1                     | 1                      | 384                | 383                           | 1                             | -1                        |
| 1302 | 52-59      | 29               | 28                | 48               | 49                | 0                     | 0                      | 77                 | 77                            | 0                             | 1                         |
| 1402 | 60         | 183              | 181               | 93               | 93                | 0                     | 1                      | 276                | 275                           | 1                             | 0                         |
| 1501 | 51-60      | 258              | 257               | 150              | 152               | 1                     | 1                      | 409                | 410                           | -1                            | 2                         |
| 1603 | 52-53      | 149              | 148               | 319              | 317               | 0                     | 0                      | 468                | 465                           | 3                             | -2                        |
| 1701 | 58         | 6                | 7                 | 192              | 189               | 3                     | 2                      | 201                | 198                           | 3                             | -3                        |
| 1702 | 55-58      | 12               | 15                | 108              | 106               | 0                     | 0                      | 120                | 121                           | -1                            | -2                        |
| 1704 | 55-58      | 30               | 29                | 203              | 205               | 0                     | 0                      | 233                | 234                           | -1                            | 2                         |
| 1705 | 53-58      | 22               | 20                | 16               | 17                | 4                     | 4                      | 42                 | 41                            | 1                             | 1                         |
| 1706 | 58         | 78               | 80                | 57               | 56                | 27                    | 26                     | 162                | 162                           | 0                             | -1                        |
| 1707 | 53-58      | 19               | 18                | 64               | 65                | 0                     | 0                      | 83                 | 83                            | 0                             | 1                         |
| 1903 | 58         | 14               | 17                | 194              | 189               | 1                     | 2                      | 209                | 208                           | 1                             | -5                        |
| 1905 | 52-58      | 2                | 5                 | 40               | 36                | 0                     | 1                      | 42                 | 42                            | 0                             | -4                        |
| 2202 | 50-55      | 187              | 185               | 164              | 166               | 1                     | 2                      | 352                | 353                           | -1                            | 2                         |
| 2302 | 50-55      | 152              | 154               | 170              | 169               | 8                     | 7                      | 330                | 330                           | 0                             | -1                        |
| 2303 | 50-56      | 183              | 184               | 150              | 150               | 0                     | 0                      | 333                | 334                           | -1                            | 0                         |
| 2504 | 55-56      | 113              | 111               | 158              | 160               | 2                     | 2                      | 273                | 273                           | 0                             | 2                         |
| 2601 | 52-59      | 29               | 29                | 89               | 88                | 0                     | 0                      | 118                | 117                           | 1                             | -1                        |
| 2801 | 52-59      | 79               | 79                | 117              | 120               | 2                     | 2                      | 198                | 201                           | -3                            | 3                         |
| 2803 | 59         | 44               | 44                | 69               | 70                | 7                     | 8                      | 120                | 122                           | -2                            | 1                         |
| 2901 | 52-59      | 27               | 27                | 37               | 35                | 2                     | 4                      | 66                 | 66                            | 0                             | -2                        |
| 2904 | 52-59      | 189              | 189               | 276              | 279               | 12                    | 9                      | 477                | 477                           | 0                             | 3                         |
| 3001 | 52-59      | 34               | 30                | 61               | 63                | 6                     | 9                      | 101                | 102                           | -1                            | 2                         |
| 3002 | 52-59      | 47               | 46                | 74               | 74                | 0                     | 0                      | 121                | 120                           | 1                             | 0                         |
| 3103 | 53         | 125              | 124               | 92               | 93                | 0                     | 0                      | 217                | 217                           | 0                             | 1                         |
| 3203 | 53-59      | 38               | 39                | 67               | 66                | 0                     | 0                      | 105                | 105                           | 0                             | -1                        |
| 3303 | 59         | 120              | 121               | 175              | 177               | 9                     | 8                      | 304                | 306                           | -2                            | 2                         |
| 3404 | 50-56      | 109              | 108               | 58               | 59                | 5                     | 5                      | 172                | 172                           | 0                             | 1                         |

The data above represents the anomalies which have been identified based on voter history and voting machine audit logs. The harder errors to identify are where voters were given a ballot for a primary in which they did not intend to vote and actually cast the ballot.

EPBs were deployed in precincts in which two closely contested State House primaries were on the ballot, specifically the Republican primary in House District 50, and the Democratic primary in House District 58. The primary for House District 50 was decided by one hundred four (104) votes, and the primary for House District 58 was decided by fifty-eight (58) votes. A review of voter history shows that for District 50, there were forty-eight (48) voters who voted in the Republican primary despite having most recently voted in a Democratic primary, and there were seventy-two (72) first-time primary voters who voted in the Republican primary. In District 58, a review of voter history shows that there were one hundred eighteen (118) voters who voted in the Republican primary despite having most recently voted in a Democratic primary, and there were thirty-two (32) first-time primary voters who voted in the Republican primary.

These facts demonstrate how detrimental allowing these errors may have been to the primary process. Although this office does not wish to call the results of these primaries into question, it is

important to point out the potential dangers of not properly training on the use of EPBs. The state considers the improper use of EPBs to have led to serious errors during the August election in Davidson County.

It is unknown why this preselect error was not caught prior to Election Day through testing or during the training process. While there was some poll worker error, it is the Davidson County Election Commission who left the door open for these errors to occur. A Republican officer of elections said it best on the August officer of elections evaluation form: a “[p]rimary ballot selection should not default to a predetermined ballot.”

Comments from eight additional officers from the August election evaluations from precincts utilizing EPBs are also telling:

I have been a [precinct registrar] for ten or fifteen years. I had looked at this as doing my civic duty. I came away feeling that as a volunteer, my time and contribution were treated with disrespect. I would never do this again. It is an unreasonably long day. The whole process seemed very disorganized, with lots of details falling through the cracks. It would help if you would bother to return phone calls. The two times I tried to call before the election, weeks went by without my phone call being returned. Also, you must need more lines on the day of the election, because I wasn’t able to get through before opening time, when I needed to see what to do about my lack of workers. Did not appreciate being treated patronizingly by the fellow in charge (I can’t remember his name—Albert?), but I’m sure he remembers me. Life is too short to be treated that way. (Republican Officer)

I had to meet one PR [precinct registrar] on Wed. to train him on the EPB to keep him from quitting. He had asked for another training session, but was not called. The other PR had never seen an EPB. She almost left. I called on a Mon. asking for another training class and was never called back. (Republican Officer)

COA [change of address] process; Better training prior to election; Receive materials and list of poll workers earlier. (Republican Officer)

We were severely understaffed. The contested school board should have been the first flag and when I called the day before and asked for one more, no effort was made to even consider that request. I know of two other polls that had 8 people; and I only talked to two. We survived only because my workers were good but no one should have to wait until 3:00 pm for lunch. (Officer, party unknown)

We all learned on the job how to work the EPBs. Set-up was not a problem, but all of us felt like we needed more individual experience in training, especially how to handle exceptions to the rule, E.G. COA. (Republican Officer)

All 3 PRs needed extra tutorials on EPB machines, but once they got the hang of it, there were few problems. I had to help connect them and had to help them with the printing of the EPB results. By attending a second EPB training, I felt much more confident. (Republican Officer)

Only difficulty was with EPB machine. Wrong precinct—fixed before opening. (Republican Officer)

I had to open and close the machines with them. [Redacted] had told me before the election that she had worked so after I talked to Albert he said not to worry she didn't need training since she had worked before. As it turned out she meant that she had been employed before not worked an election. We did a lot of OJT [on-the-job training]. She needs to go to a class before November. (Republican Officer)

The State Election Commission discussed the issue at its meeting on September 10, 2012, with Commissioner Jimmy Wallace commenting the situation represented "strike two" for Administrator Tieche and that the commission would be watching.

Following the errors of the August election, the Davidson County Election Commission voted 4-1 at its September 4 meeting not to deploy electronic poll books to issue ballot applications and record voter history on November 6. Commissioner Abernathy voted "no."

Prior to the next meeting of the Davidson County Election Commission on September 13, this office became aware that Commissioner Abernathy intended to bring up the topic again in the hope that the commission would reconsider its action. With that knowledge, Coordinator Goins had separate conversations with the chairman and secretary of the State Election Commission regarding the previous State Election Commission meeting. Following these conversations, the Coordinator sent an e-mail to Commissioner Abernathy advising him that it was not recommended that he move forward with a plan to fully deploy electronic poll books, and that the chairman and secretary had both echoed the concerns expressed at the prior State Election Commission meeting as well.

Commissioner Abernathy proceeded with his attempt to have his fellow commissioners rescind their action from the previous meeting. Three of the other members expressed concerns and no action was taken for lack of support.

#### **Davidson County Election Commission mails sample ballot that appeared to be pre-marked**

Sample ballots must be provided to voters in accordance with Tenn. Code Ann. § 2-5-211. They may be published in a newspaper of general circulation or mailed to the households of registered voters. Davidson County mailed sample ballots to its registered voters. The back page of the sample ballot read:

**PLEASE READ, MARK AND BRING THE SAMPLE BALLOT WITH YOU TO GUIDE YOU AS YOU CAST YOUR BALLOT ON ELECTION DAY OR DURING EARLY VOTING.**

The appearance of the sample ballot depended on the race. For the portion of the sample ballot listing electors for President and Vice President, United States Senate, United States House of Representatives, and Tennessee Senate Districts 18 and 20, a screenshot of the machine ballot was used. A separate page contained the candidates for the Tennessee House of Representatives, County Clerk, and municipal candidates, but instead of using a screenshot, a typed list was used. A separate insert contained proposed Metro charter amendments.

On the listing of State House candidates, a shaded black box at the end of each row separated the names in districts with two (2) candidates on the ballot, as shown below. Because candidates were

listed in ballot order, four (4) Republicans and two (2) Democrats had conspicuous shaded boxes by their names. Upon receiving the sample ballot, both candidates and voters were concerned that these boxes indicated that the Davidson County Election Commission was expressing a preference for certain candidates.

| TENNESSEE HOUSE OF REPRESENTATIVES<br>DISTRICTS 50,51,52,53,54,55,56,58,59 & 60<br>VOTE FOR ONE (1) |   |
|---|---|
| District 50   | CHARLES WILLIAMSON, Republican Party Nominee ■■■<br>BO MITCHELL, Democratic Party Nominee |
| District 51   | MICHAEL L. TURNER, Democratic Party Nominee   |
| District 52   | MICHAEL STEWART, Democratic Party Nominee ■■■<br>DANIEL LEWIS, Independent Candidate      |
| District 53   | BEN CLAYBAKER, Republican Party Nominee ■■■<br>JASON POWELL, Democratic Party Nominee     |
| District 54   | BRENDA GILMORE, Democratic Party Nominee  |
| District 55   | GARY ODOM, Democratic Party Nominee ■■■<br>SUSAN SHANN, Green Party Nominee               |
| District 56   | BETH HARWELL, Republican Party Nominee  |
| District 58   | HAROLD M. LOVE, Democratic Party Nominee  |
| District 59   | ROBERT DUVALL, Republican Party Nominee ■■■<br>SHERRY JONES, Democratic Party Nominee     |
| District 60   | JIM GOTTO, Republican Party Nominee ■■■<br>DARREN JERNIGAN, Democratic Party Nominee      |

Administrator Tieche has accepted responsibility for this error. He explained that commas were initially used to separate State House candidate names. When the first draft was presented to Administrator Tieche, he suggested a more distinctive separator so voters could separate the races. The shaded boxes then were inserted and the sample ballot was printed and mailed to the voters.

Additionally, the sample ballot that Davidson County mailed to voters violated the statutory requirements of Tenn. Code Ann. § 2-5-211(b). According to the statute, any sample ballot mailed to voters in counties using voting machines must be the machine sample ballot. A typed listing of candidates and proposed amendments does not accurately reflect the ballot that will be presented to the voter on the machine, and therefore, does not comply. For purposes of comparing, here is an excerpt from Davidson County's 2008 sample ballot, which complied with the statute:

|   |  |
|---|--|
| <p style="text-align: center;">TENNESSEE SENATE<br/>DISTRICT 20<br/>VOTE FOR ONE (1)</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">JOE M. HAYNES</p> <p style="text-align: center;">DEMOCRATIC PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">DAVID HALL</p> <p style="text-align: center;">REPUBLICAN PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Write-In</p> </div> | <p style="text-align: center;">TENNESSEE HOUSE OF REPRESENTATIVES<br/>DISTRICT 55<br/>VOTE FOR ONE (1)</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">GARY ODOM</p> <p style="text-align: center;">DEMOCRATIC PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">TIMOTHY LEE</p> <p style="text-align: center;">REPUBLICAN PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Write-In</p> </div> |
| <p style="text-align: center;">TENNESSEE HOUSE OF REPRESENTATIVES<br/>DISTRICT 50<br/>VOTE FOR ONE (1)</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">GARY W. MOORE</p> <p style="text-align: center;">DEMOCRATIC PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Write-In</p> </div>   | <p style="text-align: center;">TENNESSEE HOUSE OF REPRESENTATIVES<br/>DISTRICT 56<br/>VOTE FOR ONE (1)</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center;">BETH HARWELL</p> <p style="text-align: center;">REPUBLICAN PARTY NOMINEE</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Write-In</p> </div>   |

## **The Davidson County Election Commission “grossly understaffed” Election Day polling places on November 6**

On and following the November 6 election, this office was made aware of several complaints regarding voters' Election Day experiences in Davidson County. In reviewing evaluations completed by officers of election appointed by the election commission, it is clear that the election commission did not adequately prepare to handle the Election Day turnout for the Presidential election. These evaluations were done shortly after the election while the process was fresh on the officer's mind. While a few of these evaluations indicated proper staffing and few issues, a significant number identified major problems that would not have taken place with basic preparation.

During the interview process, the state learned that warning signs appeared before the election. First, a former employee who was given high marks for her organization and poll worker recruitment was no longer with the commission. Second, shortly before the August election, two (2) poll official recruiters left the Davidson County Election Commission. Administrator Tieche stated he decided to take the funds allocated for one (1) of the positions and hire someone to oversee the implementation of the electronic poll books. At that point, a temporary employee and another employee were given the task of recruiting poll officials at a late stage in the process without adequate resources. Finally, according to Commissioner Abernathy, compounding the issue was a Metro policy change in 2010 that no longer allowed substitute teachers to serve as poll officials. It appears that the warning signs went ignored, and according to several officers of elections, the election was understaffed.

One of the stated reasons for this review was as a result of widespread complaints regarding inadequate staffing and lack of supplies. These complaints have been confirmed by the evaluations filed by the officers of elections—the “boots on the ground” who actually worked on Election Day. Although some officers did not comment on the officer evaluations and some had no complaints in the comment sections, numerous officers pointed out that they were understaffed. The change of address process was also widely criticized, with many officers reporting they ran out of supplies early in the morning. Despite being ill prepared with supplies and not being supplied with enough workers, poll officials did their best. We appreciate and applaud the job that Davidson County poll officials did in performing their civic duty.

The county election commission is responsible for appointing poll officials. Tenn. Code Ann. §§ 2-4-102, 2-4-104 and 2-4-105 describe the minimum number of poll officials in each precinct, the requirement to have election officials of the different political parties, unless only one party has called a primary, and the limitation on the number of voting machines which may be operated by a single voting machine operator. Additionally, poll watchers were inappropriately used to perform poll official duties.

During the November 6, 2012 election, the Davidson County Election Commission violated the following areas of law relating to the appointment of poll officials:

- **Minimum of four (4) Election Day poll officials** - Tenn. Code Ann. § 2-4-102(a)(1) requires a minimum of four (4) Election Day poll officials in each voting precinct. For each election, the county election commission must appoint one (1) officer of elections and three (3) judges.

- **Polling places must have election officials from different political parties in a general election** - Tenn. Code Ann. §§ 2-4-104 and 2-4-105 require the county election commission, as nearly as practicable, to appoint election officials of the different political parties at a polling place. Additionally, Tenn. Code Ann. § 2-7-138 requires the officer of elections to be accompanied by either a judge or precinct registrar of a different political party when delivering ballot boxes and other election materials to the county election commission office on election night.
- **One (1) machine operator to no more than two (2) voting machines** - Tenn. Code Ann. § 2-4-102(a)(1) limits the number of voting machines which one (1) voting machine operator may manage. The statute states that one (1) machine operator may be appointed to operate no more than two (2) voting machines.
- **Minimum of three (3) judges must be appointed** - Tenn. Code Ann. §2-4-102(a)(1) requires a minimum of three (3) judges to be appointed to each polling location.
- **On Election Day, individuals showing up to vote and at least two (2) poll watchers were asked to perform election official duties** - Tenn. Code Ann. § 2-7-104 establishes the duties of poll watchers. A poll watcher is not appointed by the county election commission to serve as an election official and does not take the oath of office found in Tenn. Code Ann. § 2-1-111. However, on November 6, 2012, due to an inadequate number of poll officials at some polling places, two (2) poll watchers - one (1) who is a registered voter in Maury County - were utilized to perform the duties of election officials in Davidson County polling locations.

#### **Multiple precincts lacked minimum of four (4) Election Day poll officials**

On the morning of November 6, based upon the information provided, the following voting precincts had less than four (4) election officials assigned to serve as Election Day officials:

| Precinct | Assigned Precinct Officials |
|----------|-----------------------------|
| 1006     | 3                           |
| 1403     | 2                           |
| 1404     | 2                           |
| 1705     | 3                           |
| 2001     | 3                           |
| 3402     | 3                           |

Even with the minimum of four (4) precinct officials, the Election Day tasks can easily become overwhelming. Without the minimum of four (4) precinct officials, the Davidson County Election Commission creates an environment which lacks the manpower to carefully and attentively perform Election Day duties. When only two (2) or three (3) precinct officials have been appointed to a precinct, the appointed election officials must perform multiple functions, including functions which fall outside of the description of their appointed position. For example, with only three (3) precinct officials, the officer of elections must also serve as a precinct registrar and possibly as a machine operator.

With only two (2) precinct officials, the precinct registrars not only must serve as a machine operator and officer of elections, but even more critically, these two (2) precinct officials cannot hear a challenge of a voter. Pursuant to Tenn. Code Ann. §§ 2-4-102(a)(1), the Davidson County Election

Commission must appoint three (3) judges who may hear challenges to a voter's eligibility to participate in an election.

Furthermore, although there are registered voters in the following voting precincts who cast either absentee or early votes or Election Day votes, the data does not show any election officials appointed to these voting precincts:

| Precinct | Registered Voters | Early/Absentee Voters | Election Day Voters | Number of Appointed Precinct Officials |
|----------|-------------------|-----------------------|---------------------|--|
| 1304     | 369               | 159                   | 83                  | 0                                      |
| 1505     | 236               | 45                    | 57                  | 0                                      |
| 1805     | 94                | 52                    | 29                  | 0                                      |
| 2305     | 67                | 42                    | 11                  | 0                                      |

Notably, each of the voting precincts listed above, which did not have appointed precinct officials, appear to be located in polling locations which serve another voting precinct. However, pursuant to Tenn. Code Ann. § 2-3-101(b)(1), "if space is available, no more than one polling place for a precinct may be located in the same room." The language of Tenn. Code Ann. § 2-3-101(b)(1) is directed specifically at Davidson County – a county having a metropolitan form of government and a population of greater than one hundred thousand (100,000) according to the 1980 federal census. This statutory provision requires a separation of the voting precincts if space is available, even if different precincts share the same building location.

Even if space is not available, separate voting precincts require separate and distinct precinct officials. Indeed, in an e-mail regarding this very issue, Commissioner Abernathy recognizes the wisdom of this requirement and wrote, "*... locations that have two precincts located there must have the precincts and processes, clearly separated, preferably in a separate room. West End Middle School [precinct 1805] had a mess that will have to be cleaned up because of voters receiving their apps [ballot applications] from one precinct, and actually voting in another.*" (Emphasis added.)

The evaluations submitted by the officers of election are especially telling. In reviewing the evaluations from November 6, the negative comments outweigh the positive and dozens of officers took time to write detailed comments about their challenges on Election Day. The following are excerpts from those evaluations:

Grossly understaffed. Had 5 total, 2 of which were 1<sup>st</sup> timers – folks barely had time to make bathroom runs. (Republican Officer)

My workers were great and met challenge – but should not be asked to do this without adequate help again . . . . I am very disappointed in election commission staffing on last 2 elections. Training personnel were very condescending to workers as well. (Republican Officer)

This was the first election where I felt discouraged to be performing as an officer. With heavy COAs and redirects, I was basically a COA and could not adequately monitor the precinct. (Republican Officer)



Just unprepared for the immediate onslaught of voters with COA's and it was extra difficult to keep up with calling into sites for COA procedures . . . . From start of day to polls close I did not stop or take a break. (Republican Officer)

Called [the inspector] at 8 or 9 am and she could not come here until 5 or 6 . . . She was very rude. And she was on Smith Springs when I called that morning. She said she was across town. She was right around the corner. (Democratic Officer)

Just not enough trained machine operators . . . . With a presidential election, that precinct should have no fewer than 8. We were too busy to take any breaks and I had only about 7 minutes to eat lunch and use the restroom. Unacceptable. (Republican Officer)

The COA line was literally out the door. The wait was long as I was the only one trained and doing COA. I did pull one of the AC's [application clerks] to make and take all the phone calls regarding COA. The poll watcher got into conversations with the voters and they were asking advice (can I fill out my own COA form, why is it so slow, etc.). (Democratic Officer)

We had enough machine operators. We did not have enough application clerks, or precinct registrars to provide break relief. We did not have enough change of address officers, period . . . . Staffing issues are a challenge. To have a staff list just a few days before training starts does not allow enough time to plan phone calls. (We do have other things on our schedule, after all.) I would like to see the training schedule posted early online where anyone may check it. I would like to have a list about three weeks before training starts even if it is not complete. With that list in hand, I can call my workers to verify their participation. (Republican Officer)

Hire folks that are more committed. Don't assume things especially in a Presidential election. More is better, since some folks don't show! Make sure every document needed is easy to find . . . . Two inspectors—the lady visited twice. She made voters and poll officials mad with her conduct. I asked [the inspector] to relieve me for ten minutes to eat my lunch, but he did not! (Democratic Officer)

The 880-2500 number was busy for long periods of time. For predicted large turnouts we needed more people on phones for DCEC. (Republican Officer)

Originally I had a total of 12 workers scheduled to work. The day before the election, I had 6 workers. Monday night I got 2 workers to agree to work. We were so busy election day, my regular workers threatened to leave at lunchtime. I had 3 family members to come in and help until closing. One of the voters that used to work the polls agreed to help out for 5.5 hours. It was a very stressful and BUSY day for everyone. All of the workers were stressed and overworked for the amount of people we had. (Democratic Officer)

We need to recruit more good workers. I have been able to give out 2 app. for workers. (Democratic Officer)

### **Republicans not given equal representation in polling places**

Tenn. Code Ann. §§ 2-4-104 and 2-4-105 require the county election commission to appoint election officials of the different political parties at a polling place. The General Assembly qualified this requirement by inserting the language "as nearly as practicable."

Although Tenn. Code Ann. §§ 2-4-104 and 2-4-105 contains some language providing flexibility in this area, Tenn. Code Ann. § 2-7-138 plainly and unequivocally states, “the officer of elections, accompanied by either a judge or precinct registrar of another political party, shall immediately deliver the locked ballot box or boxes and remaining election supplies or equipment except the voting machines to the county election commission.”

In a general election or in a primary election in which both political parties are participating, the General Assembly recognizes the importance of having both parties represented in the polling place, particularly when transporting ballot boxes and election materials to the election commission office on election night. Consequently, Tenn. Code Ann. § 2-7-138 does not provide any flexibility in its requirement to have election officials of different political parties transporting the election night materials to the election commission office.

Notwithstanding this statutory duty to have election officials of different political parties in each voting precinct, the data provided shows that in eighteen (18) voting precincts, the election commission did not appoint any Republican election official for the November 6, 2012 election.

| Precinct     | Number of Officials | Republicans | Democrats  | Independents | Election Day Voters |
|--------------|---------------------|-------------|------------|--------------|---------------------|
| 201          | 8                   | 0           | 8          | 0            | 302                 |
| 203          | 6                   | 0           | 6          | 0            | 148                 |
| 204          | 8                   | 0           | 8          | 0            | 383                 |
| 205          | 7                   | 0           | 7          | 0            | 231                 |
| 303          | 5                   | 0           | 4          | 1            | 142                 |
| 502          | 8                   | 0           | 7          | 1            | 743                 |
| 705          | 5                   | 0           | 5          | 0            | 568                 |
| 801          | 6                   | 0           | 6          | 0            | 392                 |
| 902          | 6                   | 0           | 6          | 0            | 280                 |
| 1404         | 2                   | 0           | 2          | 0            | 26                  |
| 1604         | 6                   | 0           | 6          | 0            | 155                 |
| 1802         | 5                   | 0           | 5          | 0            | 300                 |
| 1904         | 6                   | 0           | 6          | 0            | 378                 |
| 1905         | 6                   | 0           | 6          | 0            | 440                 |
| 2001         | 3                   | 0           | 3          | 0            | 29                  |
| 2101         | 11                  | 0           | 11         | 0            | 602                 |
| 2204         | 5                   | 0           | 5          | 0            | 286                 |
| 2601         | 4                   | 0           | 4          | 0            | 604                 |
| <b>TOTAL</b> | <b>107</b>          | <b>0</b>    | <b>105</b> | <b>2</b>     | <b>6,009</b>        |

Similarly, the data shows that in two (2) voting precincts, the Davidson County Election Commission did not appoint any Democratic election official for the November 6, 2012 election.

| Precinct     | Number of Officials | Republicans | Democrats | Independents | Election Day Voters |
|--------------|---------------------|-------------|-----------|--------------|---------------------|
| 3301         | 4                   | 3           | 0         | 1            | 181                 |
| 3402         | 3                   | 3           | 0         | 0            | 113                 |
| <b>TOTAL</b> | <b>7</b>            | <b>6</b>    | <b>0</b>  | <b>1</b>     | <b>294</b>          |

Overall, based on a list of poll officials assigned as of the morning on November 6, out of one thousand one hundred twenty-five (1,125) poll officials, a total of three hundred ninety-nine (399)

were Republicans, six hundred eighty (680) were Democrats, and forty-six (46) were independents. For six thousand nine (6,009) voters, Davidson County did not assign any Republican representation in the polling place. Likewise, for the two hundred ninety-four (294) voters, Davidson County did not assign any Democratic representation in the polling place. Without casting any dispersion on the hard working and dedicated election officials in these polling places, in some voting precincts, election officials of a single party must have transported the election materials to the election commission office on election night.

Again, the statutes require the election officials to represent both statewide political parties as a means to protect the integrity of the process. Having members of both statewide political parties conduct the elections permits the voters, the candidates, and the public to be assured that the interested parties will work together to provide a fair and impartial voting process.

Tenn. Code Ann. § 2-4-105(b) contains the only exception to appointing members of the two (2) different political parties and this provision only applies when only one (1) political party chooses to hold a primary election. On November 6, 2012, the Davidson County Election Commission conducted contested federal and state elections involving both statewide political parties.

This office is not insensitive to the difficulty in finding election officials, particularly as it relates to having both political parties represented in each voting precinct. Pursuant to Tenn. Code Ann. § 2-4-103(d)(1), Davidson County has the added responsibility of only appointing precinct registrars who are registered voters of the legislative district where they serve. However, the officer of elections, machine operators and judges who do not also serve as precinct registrars, may be registered voters from anywhere in the county.

It may be difficult to perform this duty, but fairness and the law require the county election commission to appoint election officials of both political parties in each voting precinct.

### **One (1) machine operator to no more than two (2) voting machines**

Each election official in the voting precinct holds a critical position in the voting process. However, the voting machine operator holds a position and performs a function which is at the heart of the election – setting up the correct ballot for the voter in a timely manner. Having an inadequate number of voting machine operators will result in long lines. Machine operators managing more than two (2) machines in a precinct cannot set up machines timely for waiting voters. Given the critical tasks which the voting machine operators perform, the county election commission must ensure that each voting precinct has an adequate number of voting machine operators who are properly trained.

Tenn. Code Ann. § 2-4-102(a)(1) limits the number of voting machines which one (1) voting machine operator may manage. The statute states that one (1) machine operator may be appointed to operate no more than two (2) voting machines. However, in reviewing the assignments for November 6, the data shows that in fifty-three (53) voting precincts, the Davidson County Election Commission did not appoint an adequate number of voting machine operators for the November 6, 2012 election.

| Precinct | Total Officials | JOs | MOs | Total Operators | Total Machines | Machines Over |
|----------|-----------------|-----|-----|-----------------|----------------|---------------|
| 201      | 8               | 1   | 1   | 2               | 5              | 1             |
| 401      | 11              | 1   | 2   | 3               | 7              | 1             |
| 404      | 10              | 1   | 2   | 3               | 7              | 1             |
| 502      | 8               | 1   | 1   | 2               | 6              | 2             |
| 505      | 4               | 1   | 0   | 1               | 5              | 3             |
| 603      | 6               | 1   | 0   | 1               | 3              | 1             |
| 704      | 6               | 1   | 0   | 1               | 4              | 2             |
| 705      | 5               | 1   | 0   | 1               | 3              | 1             |
| 803      | 6               | 1   | 1   | 2               | 6              | 2             |
| 804      | 8               | 1   | 0   | 1               | 5              | 3             |
| 901      | 7               | 1   | 1   | 2               | 5              | 1             |
| 902      | 6               | 1   | 0   | 1               | 3              | 1             |
| 903      | 11              | 1   | 1   | 2               | 6              | 2             |
| 1006     | 3               | 0   | 0   | 0               | 3              | 3             |
| 1301     | 7               | 1   | 1   | 2               | 5              | 1             |
| 1303     | 8               | 1   | 0   | 1               | 6              | 4             |
| 1304     | 0               | 0   | 0   | 0               | 2              | 2             |
| 1401     | 10              | 1   | 1   | 2               | 5              | 1             |
| 1404     | 2               | 0   | 0   | 0               | 2              | 2             |
| 1502     | 6               | 1   | 0   | 1               | 4              | 2             |
| 1505     | 0               | 0   | 0   | 0               | 2              | 2             |
| 1602     | 4               | 1   | 0   | 1               | 3              | 1             |
| 1603     | 11              | 1   | 1   | 2               | 8              | 4             |
| 1701     | 5               | 1   | 0   | 1               | 4              | 2             |
| 1703     | 5               | 1   | 0   | 1               | 3              | 1             |
| 1704     | 4               | 1   | 0   | 1               | 4              | 2             |
| 1705     | 3               | 0   | 0   | 0               | 2              | 2             |
| 1802     | 5               | 1   | 0   | 1               | 3              | 1             |
| 1803     | 9               | 1   | 1   | 2               | 7              | 3             |
| 1805     | 0               | 0   | 0   | 0               | 2              | 2             |
| 1901     | 8               | 1   | 1   | 2               | 5              | 1             |
| 1905     | 6               | 1   | 0   | 1               | 3              | 1             |
| 2003     | 10              | 1   | 1   | 2               | 7              | 3             |
| 2204     | 5               | 0   | 0   | 0               | 3              | 3             |
| 2301     | 9               | 1   | 1   | 2               | 5              | 1             |
| 2304     | 7               | 1   | 0   | 1               | 3              | 1             |
| 2305     | 0               | 0   | 0   | 0               | 2              | 2             |
| 2401     | 7               | 1   | 1   | 2               | 5              | 1             |
| 2404     | 5               | 1   | 0   | 1               | 3              | 1             |
| 2405     | 4               | 1   | 0   | 1               | 3              | 1             |
| 2406     | 6               | 1   | 1   | 2               | 7              | 3             |
| 2501     | 10              | 1   | 2   | 3               | 7              | 1             |
| 2601     | 4               | 1   | 0   | 1               | 3              | 1             |
| 2701     | 7               | 1   | 1   | 2               | 5              | 1             |
| 2703     | 8               | 1   | 1   | 2               | 6              | 2             |
| 2801     | 7               | 1   | 1   | 2               | 6              | 2             |
| 2802     | 6               | 1   | 1   | 2               | 5              | 1             |
| 3002     | 5               | 0   | 1   | 1               | 3              | 1             |
| 3104     | 7               | 1   | 1   | 2               | 5              | 1             |
| 3303     | 7               | 1   | 0   | 1               | 7              | 5             |
| 3403     | 11              | 1   | 2   | 3               | 7              | 1             |
| 3404     | 5               | 0   | 1   | 1               | 4              | 2             |
| 3501     | 6               | 1   | 0   | 1               | 6              | 4             |

Note, that in the voting precincts which are in the shaded rows, i.e. precinct numbers 1304, 1505, 1805, and 2305, voting machines were sent to these precincts without any apparent voting machine operator assigned.

Given the vital and critical functions of the voting machine operator, these positions must be clearly identified – not only to the election officials themselves, but also to the viewing public. The numbers presented above are based on the assignments made as of the morning of November 6 and do not take into account the reported fifty (50) poll officials who were assigned but did not work.

### **Minimum of three (3) judges must be appointed**

Tenn. Code Ann. § 2-4-102(a)(1) requires a minimum of three (3) judges to be appointed to each polling location. Additionally, the statute states that two (2) of the judges appointed shall concurrently serve as precinct registrars, and in precincts where voting machines are used, any judge not appointed to serve as a precinct registrar shall concurrently serve as a machine operator for that polling place. According to Tenn. Code Ann. § 2-4-102(a)(1), “additional precinct registrars and machine operators may be appointed in accordance with 2-4-105 as necessary to adequately staff the polling place.” Just as in the situation with the voting machine operators, the data does not identify an adequate number of judges for each voting precinct. Also, it is vitally important to keep election judges balanced by party membership.

Based upon Tenn. Code Ann. § 2-4-102, judges also serve as either precinct registrars or machine operators. Consequently, when reviewing the data, this office added the number of Judge Operator (JO) positions and the number of Precinct Registrar (PR) positions together in each precinct to determine the possible number of judges in a voting precinct. The expectation is every polling place examined would have at least three (3) clearly identifiable judges appointed.

However, when examining the data regarding one hundred fifty-five (155) polling places, the minimum of three (3) judges could not be easily identified in twelve (12) polling places. Based upon the information for the twelve (12) polling places below, one (1) polling place only had one (1) clearly identifiable judge and eleven (11) polling places only had two (2) clearly identifiable judges.

| Precinct | Precinct Officials | JOs | PRs | Total of JOs and PRs |
|----------|--------------------|-----|-----|----------------------|
| 1403     | 2                  | 1   | 0   | 1                    |
| 1006     | 3                  | 0   | 2   | 2                    |
| 1404     | 2                  | 0   | 2   | 2                    |
| 1701     | 5                  | 0   | 2   | 2                    |
| 1705     | 3                  | 0   | 2   | 2                    |
| 2001     | 3                  | 1   | 1   | 2                    |
| 2204     | 5                  | 0   | 2   | 2                    |
| 2405     | 4                  | 1   | 1   | 2                    |
| 3002     | 5                  | 0   | 2   | 2                    |
| 3304     | 5                  | 1   | 1   | 2                    |
| 3404     | 5                  | 0   | 2   | 2                    |
| 3405     | 9                  | 1   | 1   | 2                    |

Furthermore, as mentioned above, it is vitally important to appoint election judges of a different political party in a voting precinct. When examining the political party designation of the judge operators and precinct registrars in one hundred fifty-five (155) polling places, the three (3) identifiable judges in thirty-nine (39) precincts were all of the Democratic Party. Similarly, in seven

(7) voting precincts, three (3) identifiable judges were all of the Republican Party. The chart below shows the identifiable judges by political party designation.

| Precinct | JO | PR | Total | Party |
|----------|----|----|-------|-------|
| 105      | 1  | 2  | 3     | D     |
| 201      | 1  | 2  | 3     | D     |
| 203      | 1  | 2  | 3     | D     |
| 204      | 1  | 2  | 3     | D     |
| 205      | 1  | 2  | 3     | D     |
| 303      | 1  | 2  | 3     | D     |
| 305      | 1  | 2  | 3     | D     |
| 306      | 1  | 2  | 3     | D     |
| 502      | 1  | 2  | 3     | D     |
| 503      | 1  | 2  | 3     | D     |
| 705      | 1  | 2  | 3     | D     |
| 801      | 1  | 2  | 3     | D     |
| 902      | 1  | 2  | 3     | D     |
| 1403     | 1  | 0  | 1     | D     |
| 1404     | 0  | 2  | 2     | D     |
| 1602     | 1  | 2  | 3     | D     |
| 1603     | 1  | 2  | 3     | D     |
| 1604     | 1  | 2  | 3     | D     |
| 1704     | 1  | 2  | 3     | D     |
| 1707     | 1  | 2  | 3     | D     |
| 1802     | 1  | 2  | 3     | D     |
| 1901     | 1  | 2  | 3     | D     |
| 1903     | 1  | 2  | 3     | D     |

| Precinct | JO | PR | Total | Party |
|----------|----|----|-------|-------|
| 1904     | 1  | 2  | 3     | D     |
| 1905     | 1  | 2  | 3     | D     |
| 1906     | 1  | 2  | 3     | D     |
| 2001     | 1  | 1  | 2     | D     |
| 2101     | 1  | 2  | 3     | D     |
| 2102     | 1  | 2  | 3     | D     |
| 2103     | 1  | 2  | 3     | D     |
| 2104     | 1  | 2  | 3     | D     |
| 2204     | 0  | 2  | 2     | D     |
| 2403     | 2  | 2  | 4     | D     |
| 2503     | 1  | 2  | 3     | D     |
| 2601     | 1  | 2  | 3     | D     |
| 2801     | 1  | 2  | 3     | D     |
| 3002     | 0  | 2  | 2     | D     |
| 3004     | 1  | 2  | 3     | D     |
| 3303     | 1  | 2  | 3     | D     |
| 402      | 1  | 2  | 3     | R     |
| 2203     | 1  | 2  | 3     | R     |
| 3204     | 1  | 2  | 3     | R     |
| 3301     | 1  | 2  | 3     | R     |
| 3402     | 1  | 2  | 3     | R     |
| 3404     | 0  | 2  | 2     | R     |
| 3405     | 1  | 1  | 2     | R     |

When appointing the election officials under Tenn. Code Ann. § 2-4-102(a)(1), the Davidson County Election Commission should clearly identify those election officials who serve as judges in the voting precincts. Properly assigning and categorizing the judges, and other election officials, helps the election officials understand their responsibilities, assists poll watchers in knowing which election officials will hear any challenges to voters, and reassures the voting population and candidates that the voting process is being conducted pursuant to state law in a fair and impartial manner.

#### **On Election Day, at least two (2) poll watchers were utilized to perform election official duties**

Tenn. Code Ann. § 2-7-104 establishes the duties of poll watchers. A poll watcher is not appointed by the county election commission to serve as an election official and does not take the oath of office found in Tenn. Code Ann. § 2-1-111. Rather, poll watchers are appointed by the political parties, the candidates, or citizen organizations to observe, rather than conduct, the electoral process.

It has been brought to our attention that on November 6, there were at least two (2) poll watchers who were utilized to perform the duties of election officials. This occurred due to the election officials' need to obtain help in performing their Election Day duties.

In one instance, a voting precinct which had run out of provisional ballots utilized a poll watcher to go and get blank ballots from another voting precinct for the voting precinct which needed the supplies. In the second instance, precinct officials allowed a poll watcher to serve as a voting machine operator. The poll watcher who was utilized as a machine operator is a registered voter in Maury County and could not have legally been appointed to perform election official duties by the election commission for November 6, pursuant to Tenn. Code Ann. § 2-4-103.

The criticism in utilizing the poll watchers to perform election official duties does not lie with the Election Day officials. The review of the 2012 election cycle in Davidson County has revealed that the election officials of Davidson County are dedicated and hard working.

**Officer of elections evaluations raise concerns that the Davidson County Election Commission did not adequately train Election Day poll officials for November 6**

Tenn. Code Ann. § 2-4-108 requires the election commission to instruct election officials as to their duties and to educate the election officials about Tennessee election laws. Properly training the election officials prepares the workers for success. The training equips election officials with the knowledge to perform their duties and to follow the current laws.

The comments below are taken from November officer of elections evaluations:

It was very hard to manage the other workers because most did not know what to do during opening and closing, so I was trying to figure out their job, as well as mine as COA and officer. (Republican Officer)

It would have helped to have had the officer's manual at the training session. There was no correlation between the PowerPoint slides and the layout of material in the officer's manual that I could see on my brief inspection. I felt that the officer's manual was improved from year's past, but I would have liked to have had some training with it before election day. (Republican Officer)

Never got written/e-mail notice of assignment on training. Would have liked specific training on COA site management. (Republican Officer)

In the 3 officer training classes I've been through, the most frequent refrain is "you all have been doing this so we're gonna fly through it". Perhaps there needs to be a new officer's class once a year, perhaps broken out over 2-3 hour sessions, so we can go slowly through how and why things are done. Some of us want to know so we can do it correctly and explain it to the voters. (Democratic Officer)

**The Davidson County Election Commission failed to provide basic supplies for poll officials on Election Day**

In order to conduct elections, polling places must have adequate Election Day supplies. From voting machines to pens, and everything in between, voting precincts without election supplies cannot function properly. The administrator of elections is responsible for the "requisition and purchase of any supplies necessary for the operation of the election commission office and the conduct of all elections" pursuant to Tenn. Code Ann. § 2-12-201(a)(4).

The comments below, taken from the officer evaluations, highlight complaints that polling places ran out of forms and had trouble reaching anyone to bring them additional supplies, and in many cases, shortly after the polls opened.

[R]an out of COA forms by 8:30 AM . . . forms did not arrive until late afternoon.  
(Republican Officer)

Not enough supplies (vote stickers, COA forms, provisional ballots). This was a Presidential election. (Republican Officer)

Whole process seemed disjointed compared to previous. Little help with questions on missing items. (Republican Officer)

We ran short on some supplies. This has not been a problem in the past. I had trouble getting anyone on the phone. (Democratic Officer)

It was a difficult day despite having good workers. My change of address forms were located in 2 different places. I thought I had run out only to locate a few more but then did run out. I was promised someone would bring more but they never came . . . Many times no one would answer the phone. I left messages but no one returned the calls. I feel there should be more people to answer the phone. (Democratic Officer)

Very difficult to contact anyone for help. I had to obtain more applications for ballot from a neighboring voting location because the election office did not send out additional.  
(Republican Officer)

Not enough COA forms – I called for extras at 10 am or so – I had to go make copies – no carbon – copies were delivered 4 pm or so? Just copies ‘no carbon’ that was a problem.  
(Democratic Officer)

### **Pattern of typographical errors erodes public confidence and costs taxpayers money**

Tenn. Code Ann. § 2-12-201(a)(9) requires the administrator of elections to compile and disseminate information to the public, candidates, voters, the press, and all inquiring parties regarding all aspects of the electoral process on all governmental levels. Although an occasional typographical error or mistake is understandable, this report reveals a pattern developed regarding mistakes on information given to the public.

#### **• Davidson County Election Commission distributes incorrect flyer to voters**

A flyer designed by the Davidson County Election Commission was handed out in the March Presidential Preference Primary election to provisional voters without a photo ID. This flyer had the wrong phone number for voters to contact the Tennessee Department of Safety regarding any questions as to how to obtain a free photo ID. Instead of the correct phone number, the number on the flyer was to a Bank of America hotline.

Two former employees said they informed Administrator Tieche of the mistake in time to correct the phone number on the flyer prior to its distribution to voters. Specifically, one former employee alleges Administrator Tieche chose not to correct the error for the March election because he thought the state made the mistake. However, the mistake was made by someone at the Davidson County Election Commission who mistyped the correct phone number which had been supplied by the state.



- **Davidson County Election Commission publishes incorrect legal notice for August 2 election**

Pursuant to Tenn. Code Ann. § 2-12-201(a)(7), the administrator of elections is responsible for the “preparation of all notices for publication required by this title.” This office received a complaint after the election by former State Representative Mary Pruitt, who lost her primary election by fifty-eight (58) votes. She was upset because the county election commission had given her a list of precincts which were supposed to be in her district. She relied upon this information and did not initially send a campaign worker to precinct 502 because it was not on a list given to her by the Davidson County Election Commission.

On April 12, a preliminary precinct list was distributed to staff based on the redistricting plan in place as of that date. Over the next several weeks, election commission staff and the planning commission continued to finalize the precinct plan.

On May 18, the election commission staff member responsible for maintaining the list of precincts informed Administrator Tieche in writing that the initial list for April 12 contained an error. Precinct 502 had incorrectly been listed as being in State House District 51, when it should have been listed in State House District 58. It appears that Administrator Tieche failed to inform the staff member who was preparing the public notice of the error.

Even though Administrator Tieche had received written notice of the error on May 18, the error appeared in the legal notice published in the *Tennessean*, which Administrator Tieche had not reviewed. Additionally, Administrator Tieche later issued a warning entry to a staff member as a result of this error seven months later on January 30, 2013.

- **Davidson County Election Commission published incorrect legal notice for the November 6 election, costing taxpayers nearly \$7,500**

Despite the error on the August notice, for the second consecutive election, a similar mistake was made in November. Once again, the publication mistake was discovered by someone outside of the Davidson County Election Commission office, this time prior to the election. Therefore, a correction was issued at a cost of \$7,474.50 to Davidson County taxpayers.

Again, the incorrect public notice was not reviewed by Administrator Tieche prior to its publication in the *Tennessean* on November 1. Administrator Tieche stated that the first notice he reviewed was the corrected version published on November 3.

- **The Davidson County Election Commission sent out absentee ballots with incorrect candidate names**

Tenn. Code Ann. § 2-5-204 governs the placement of candidate’s names on the ballot. Specifically, section (a) requires that “[e]ach qualified candidate’s name shall be placed on the ballot as it appears on the candidate’s nominating petitions . . . .” Petitions provided to the candidates have a section that explicitly instructs them to write their names as they wish for them to appear on the ballot.

In addition to the state and federal primaries held in August, Davidson County also held a Goodlettsville City Election to elect two (2) commissioners to four-year terms. On Monday, August 27, 2012, the staff member responsible for creating the ballot reached out to the administrator and petition team for the names of city candidates for the November ballot. A candidate listing was provided, and ballots were prepared to be mailed out in advance of the forty-five (45) day UOCAVA (military and overseas voter) ballot deadline on Saturday, September 22, 2012.

On Friday, September 28, an error was discovered. When the candidate listing was prepared in August, staff had apparently used the sign-in list from when candidates turned in their petitions instead of using the names as they appeared on the nominating petitions. The staff member responsible for preparing the ballots was immediately notified and had corrected ballots available as of Monday, October 1.

Sixteen (16) ballots were affected by this error. These voters were contacted, and those who had not yet voted were given an opportunity to spoil the erroneous ballot and receive the corrected version.

#### **The Davidson County Election Commission failed to sufficiently review voter registration forms for deficiencies**

During this review, a question was raised as to whether a failure to include place of birth on the state-provided voter registration form creates a deficiency that must be corrected before a voter's registration may be processed. Davidson County had not been treating these forms as deficient applications.

Tenn. Code Ann. § 2-2-120(a) grants the administrator of elections the authority to determine whether a registrant is entitled to be registered based on the registrant's answers to the questions on the permanent registration application. This permanent registration record can be one of two forms: the federal voter registration form mandated by the National Voter Registration Act, or the state-provided voter registration form as described in Tenn. Code Ann. § 2-2-116.

The statute requires the form to ask for and the voter to provide specific information, including the date and place of birth. For forms that do not include all of the required information, the coordinator's office has prepared a sample letter that can be sent to voters who have submitted deficient registration forms. Among the deficiencies listed on this letter is a failure to provide the voter's place of birth, as seen in the excerpt below.

|  |  |
|--|--|
| Your voter registration application is deficient for one of the following reasons: |  |
| <input type="checkbox"/>   | Name missing or incomplete;  |
| <input type="checkbox"/>   | Not providing a complete address, providing a P.O. Box number or a business address as your legal address;   |
| <input type="checkbox"/>   | Not providing social security number;  |
| <input type="checkbox"/>   | Not providing a date of birth, <u>place of birth</u> and/or not answering the question regarding being eighteen (18) years old on/or before the next election; |

Finally, pursuant to Tenn. Code Ann. § 2-2-120(c), the county election commission must review a sampling of voter registration forms that have been accepted since the last inspection. These reviews must be done at least quarterly. The coordinator has the authority to set a policy as to how these inspections should be conducted. Current policy requires a county election commission to inspect at least ten percent (10%) of new registrations, but the number of forms inspected may be capped at two hundred (200). Deficiencies are reported on a form provided by the coordinator (shown below), which includes a space to report each category, including a lack of place of birth if a voter has used the state-provided form to apply.

| County Voter Registration Inspection Report   |  |                                |  |  |  |                      |  |  |  |
|---|--|--------------------------------|--|--|--|----------------------|--|--|--|
| Name of County _____  |  |                                |  |  |  |                      |  |  |  |
| At a public meeting held at _____ (time) on _____ (date), the members of our County Election Commission who have <u>signed this report</u> below inspected a random number* of voter registration forms processed in our county for deficiencies. |  |                                |  |  |  |                      |  |  |  |
| Total number of new registrations inspected<br><small>(*at least 10 % of the registration forms received in this quarter not to exceed 200)</small>   |  |                                |  | Number of new registrations found deficient  |  |                      |  |  |  |
| Administrator's Name _____  |  |                                |  | Number of deficient registrations identified where the individual has voted in an election |  |                      |  |  |  |
| **** Deficiency Breakdown by Category ****  |  |                                |  |  |  |                      |  |  |  |
| Name Missing  |  | Legal Address Blank or PO Box  |  | No Date of Birth<br><small>DATE MUST HAVE YEAR MONTH AND DAY</small>                       |  | No Social Security # |  |  |  |
|   |  |                                |  | No Place of Birth<br><small>(unless Federal VR Form)</small>                               |  |                      |  |  |  |
| Citizenship Question  |  | TN Residency Question          |  | Will Be 18 Years Old Question  |  | Felony Question      |  |  |  |
|   |  |                                |  |  |  |                      |  |  |  |
| No Signature  |  | If Unable to Sign - No Witness |  | Completed Form in Pencil   |  | Gender               |  |  |  |
|   |  |                                |  |  |  |                      |  |  |  |
| Republican County Election Commissioner(s)  |  |                                |  | Democratic County Election Commissioner(s)   |  |                      |  | <b>State Election Office Use</b><br>Report Rcvd on _____<br>Percent Deficient _____<br>Comments: |  |
|   |  |                                |  |  |  |                      |  |  |  |
|   |  |                                |  |  |  |                      |  |  |  |
|   |  |                                |  |  |  |                      |  |  |  |
| File Signed Original within 7 days at the State Election Office. Keep a Photocopy of this Report in County Election Office.   |  |                                |  |  |  |                      |  |  |  |
| Form Revised 07/15/2011   |  |                                |  |  |  |                      |  |  |  |

Therefore, pursuant to law and policy, a state form that does not include a place of birth is deficient. As indicated in the bottom right-hand corner of the document shown above, the current Voter Registration Inspection Report has been in place since July 15, 2011.

### Davidson County submits conflicting reports regarding participating voters

During this review, we discovered that Davidson County had submitted at least seven (7) conflicting numbers regarding participating voters in the November 6 election. On November 26, the Davidson County Election Commission certified a total of 246,517 ballots cast in the November election. Following each election, counties must submit reports to the state containing the names and numbers of voters in the election. On these reports, Davidson County has submitted six (6) numbers that differ from the total certified on November 26, as seen in the chart below:

| Date              | Total   | Difference from Certified Vote Total |
|-------------------|---------|--------------------------------------|
| November 26, 2012 | 246,517 |                                      |
| December 12, 2012 | 246,387 | 130                                  |
| December 14, 2012 | 246,383 | 134                                  |
| December 20, 2012 | 245,382 | 1,135                                |
| February 26, 2013 | 246,446 | 71                                   |
| March 23, 2013    | 246,245 | 272                                  |
| March 27, 2013    | 246,415 | 102                                  |

Additional data regarding Election Day turnout in two closely contested State House races was requested, leading to further conflicting data. In District 50, the November 26, 2012 report shows 8,279 votes were cast on Election Day. In an e-mail on March 27, 2013, Administrator Tieche wrote that 6,561 votes were cast on machines on Election Day and 6,564 voters received history. In District 60, the November 26, 2012 report shows 8,726 votes were cast on Election Day. In his March 27, 2013 email, Administrator Tieche wrote that 8,388 votes were cast on machines and 8,385 voters received history.

These errors were initially pointed out to Administrator Tieche in March. Administrator Tieche's response to the errors submitted on May 2 is attached as Exhibit 5.<sup>1</sup>

#### ADDITIONAL COMMENTS

##### Customer service complaints regarding the Davidson County Election Commission

Several voters have reached out not only to the Division of Elections, but also to the Secretary of State and Governor regarding customer service that they received from the Davidson County Election Commission during the 2012 election cycle. Voters and poll officials have complained that responses from the election commission are delivered in a curt and unprofessional manner.

A specific example arose prior to the November election when a voter inquired about his registration status after encountering problems on the Davidson County Election Commission website. He received the following response:

Trust me – you're registered – its [*sic*] an issue between your name and the way my data is stored – I'll ifx [*sic*] it after the election.

Best,

DCEC

The voter was understandably upset and forwarded the e-mail to Governor Haslam, Secretary Hargett, and Coordinator Goins. The error could have been explained simply, but the poorly crafted response led the voter to question how seriously the election commission was taking its duties.

---

<sup>1</sup> Administrator Tieche's explanation seems to indicate that he was not aware of the specifics of the expanded finding until a meeting on April 26. He was copied, however, on a letter to Art McClellan, his attorney, on April 18, which contained not only the expanded finding but also copies of the reports from which the numbers were taken.

Davidson County should review their policies to ensure that their customers, the voters, can expect timely and accurate responses to their questions. Based on interviews conducted with staff, it appears that one individual was responsible for answering the bulk of e-mails that came into the general questions account.

Additionally, Election Day poll officials commented on their evaluations that staff treated them rudely when they called in to the phone bank.

Phone bank was lacking in tact + diplomacy + service. (Republican Officer)

On the day we work – if we have to call for info or help it would be nice if we were not talked to in an exasperated manner. Sometimes we need little reminders as to where to find something or how to do it. Thanks. (Republican Officer)

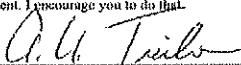
### **Questionable timing of disciplinary actions taken by Administrator Tieche**

The Coordinator of Elections has no authority over personnel decisions at the county level. It has come to our attention, however, that two (2) employees were issued written warnings by Administrator Tieche shortly after they interviewed with the state for this review. The state held staff interviews on January 29, 30, 31, and February 1, 2013.

The timing of these disciplinary actions is questionable. Although the written warnings were given to the employees on January 30, 2013, they were dated December 12, 2012. Upon questioning the disciplinary actions, the administrator stated that these warnings had been written on December 12. One memo, however, indicates a date of January 30, 2013, in the header on page 2, while showing a date of December 12, 2012, on the cover page.

|                      |   |
|----------------------|---|
| <b>Warning Entry</b> |   |
| Date:                | December 12, 2012                             |
| To:                  | [REDACTED]                                    |
| From:                | Albert Tieche - AOE                           |
| Subject:             | Documentation of errors in 2012 Election year |

Page 1 of 2

|   |
|---|
| <div>January 30, 2013</div> <p>source for accuracy. In each case the original source must be identified in advance and each person who checks the document must use it as the standard to check against. Please reference my e-mail of Oct. 4, 2012 regarding the need to use the original source.</p> <p>This letter is a written warning to you identifying the areas needing immediate improvement. It will be placed into your personal development file that I maintain in my office for performance evaluations purposes. I have every confidence in your skills and abilities and believe that you will take the necessary corrective action to insure these type errors do not occur in the future.</p> <p>I will continue to monitor your performance and if after one year, there are no similar type errors in your performance of your duties, you may request that the written warning be changed from an active status to an inactive status, meaning the document cannot be considered during evaluations. After two years of inactive status, the document will be destroyed.</p> <p>However, further incidents of less than satisfactory performance by you in the performance of your duties may result in further disciplinary action, up to and including dismissal.</p> <p>Your signature below only certifies that you have been shown the written warning. You may state your version of the incidents above in writing. We can then discuss that and attach it to this document. I encourage you to do that.</p> <p></p> <p>Albert U. Tieche - Administrator</p> |
|---|

Page 2 of 2

Lionel Barrett, the Davidson County Election Commission employee whose responsibilities included advising the administrator on human resource matters, stated that he neither recommended the written warnings nor was informed of them until after they were issued on January 30, 2013. Based on our interviews, we understand that Commissioner Abernathy was a “driving force” behind these written warnings.

The state finds the timing and potential backdating of the reprimands troubling. Obviously, warnings issued shortly after talking to the state office could cast a chilling effect and hinder our interview process since at least twelve (12) staff members had yet to be interviewed. Indeed, after this action, some employees represented to the state they were “nervous” regarding the interviews.

### **CONCLUSION**

This review has identified a number of errors that occurred during the 2012 election cycle. It is of note that the Davidson County Election Commission has acknowledged “various irregularities or mistakes” in its response to this review. The state appreciates the election commission’s willingness to resolve these issues and work toward restoring confidence in the election process in Davidson County.

# EXHIBIT 1

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



DAVIDSON COUNTY ELECTION COMMISSION  
PERMANENT REGISTRATION OFFICE  
POST OFFICE BOX 660  
NASHVILLE, TN 37202  
(615) 862-8800

April 30, 2013

VIA ELECTRONIC AND U.S. MAIL

Mr. Mark Goins  
Coordinator of Elections  
Division of Elections  
312 Rosa L. Parks Avenue  
9<sup>th</sup> Floor, Snodgrass Tower  
Nashville, Tennessee 37243-0309

Dear Mr. Goins:

Members of the Davidson County Election Commission ("DCEC") have examined the draft report of the review conducted by the Coordinator of Elections. As you are aware, four of the DCEC Commissioners were recently appointed. As a result, the majority of the Commissioners have no direct personal knowledge or involvement regarding most of the issues raised in the draft report. We recognize, however, the importance of responding to the review on behalf of the DCEC and appreciate the opportunity that you have provided to the Commission.

Our review of the draft report reveals that there are several general areas of concern over which the Commission has determined that it has sufficient information to provide a formal response. In some of the areas noted below, we acknowledge that problems did occur and the Commission will take steps to address these matters.

- 1) Allegation: Early Voting schedule set by administrator of elections violated Tenn. Code Ann. § 2-6-103.  
Response: It is acknowledged that an error did occur as previously addressed by the State Election Commission in May of 2012. The DCEC is committed to instituting voting schedules that comply with the law and will make efforts to ensure that there is not a similar occurrence in the future.
- 2) Allegation: Davidson County Election Commission deploys electronic poll books set to "preselect" a partisan primary ballot.





Response: It is acknowledged that an error did occur. It is the Commission's understanding that this problem arose due to the programming of the poll books by the vendor. (Please see the attached correspondence from ES&S.) The Commission also recognizes that it has the ultimate responsibility to ensure that poll books are programmed correctly. Extensive training concerning the proper operation of the electronic poll books was provided to poll officials. It is unfortunate that the software error was not discovered during this training.

- 3) Allegation: Davidson County Election Commission mails sample ballot that appeared to be pre-marked.

Response: It is acknowledged that an error did occur. Efforts will be made to ensure that there is not a similar occurrence in the future.

- 4) Allegation: The Davidson County Election Commission "grossly understaffed" Election Day polling places on November 6.

Response: It is acknowledged that the staffing of elections has been a problem experienced in Davidson County for an extended period of time. Due to the size of the county and the number of polling locations, it has been difficult to employ sufficient number of poll officials. It is not believed, however, that this lack of adequate staffing has affected the outcome of any election. The DCEC is dedicated to resolving this issue. Various corrective measures have already been implemented or discussed. These measures include working with the chairs of the political parties to help in recruitment of poll workers; establishing a program to work with civic groups to "adopt a poll;" and reviewing established lists of past poll workers to determine who is interested in continuing to work in the elections. It is expected that additional recruitment measures will be considered and implemented.

- 5) Allegation: The Davidson County Election Commission did not adequately train Election Day poll officials for November 6.

Response: Based on information supplied to the Commission, it appears that the majority of poll officials did not report problems with the training. This does not mean, however, that problems may not have existed in some circumstances. The DCEC will review the training to see if changes need to be made.

- 6) Allegation: The Davidson County Election Commission failed to provide basic supplies for poll officials on Election Day.

Response: It is acknowledged that there was a shortage of some supplies in some locations. In the future, the DCEC will work with the Administrator to see that a similar problem does not reoccur.

- 7) Allegation: Pattern of typographical errors erodes public confidence and costs taxpayer money.

Response: It is acknowledged that there were some typographical errors in some materials distributed to the public. The DCEC will work with the Administrator to see that accurate information is provided to the public.

8) Allegation: The Davidson County Election Commission failed to sufficiently review voter registration forms for deficiencies.

Response: It is the Commission's understanding that there has been possible confusion regarding the effect of a registrant's failure to provide a place of birth on the state form. This matter has now been clarified by the Coordinator and future problems are not expected.

9) Allegation: Questionable timing of disciplinary actions taken by Administrator Tieche.

Response: This allegation concerns the Commission. Although the timing of the disciplinary action is troubling, at this point, the Commission is in need of additional facts before any final conclusions can be made. This is an issue that the Commission will review further.

10) Allegation: Davidson County submits conflicting reports regarding participating voters.

Response: It is acknowledged that Davidson County submitted conflicting reports regarding participating voters in the November 6, 2012 election. It is the understanding of the Commission that some of the conflicting reports were due to errors resulting from the omission of the voter histories for change-of-address and provisional voters. It is also the understanding of the Commission that errors also resulted from obtaining data from the MegaProfile database rather than the Unity Election Results Manager software. Discrepancies in the reports submitted for House Districts 50 and 60 resulted from the omission of votes cast in split precincts. The Administrator has stated that the certified results for the November 6 election were 246,517. The Administrator further states that this certified number has never changed.

The DCEC is committed to fulfilling its mission of conducting fair and impartial elections. As acknowledged above, various irregularities or mistakes have occurred. In a spirit of cooperation, the DCEC looks forward to working with the Coordinator in resolving any issues that would impede the responsibilities of this office.

Sincerely,

*Ronald B. Buchanan by permission*

Ronald B. Buchanan

Chair, Davidson County Election Commission

Cc: Commissioner, Jim Gotto  
Commissioner, Tricia Herzfeld  
Commissioner, Jennifer Lawson  
Commissioner, A.J. Starling  
Administrator, Albert Tieche  
Arthur E. McClellan, Esq.



Election Systems & Software, LLC  
11208 John Galt Blvd  
Omaha, NE 68137, USA  
402.938.1300 | media@essvote.com

August 30, 2012

Albert U. Tieche  
Administrator of Elections  
Davidson County Election Commission  
Metro Office Building  
800 2<sup>nd</sup> Avenue South, 1<sup>st</sup> Floor  
P.O. Box 650  
Nashville, TN 37202

Dear Mr. Tieche:

We understand that during the August 2<sup>nd</sup> Primary Election concern was raised regarding poll workers having the potential to inadvertently select the incorrect party on the electronic poll book. In this letter we would like to review the functionality of the electronic poll book as it relates to a poll worker's selection of the voter's requested political party, review how the system was set up for the August 2<sup>nd</sup> Primary Election and outline the programming change that eliminates this concern for future primary elections.

Davidson County used the latest version of software in the Primary. In this version the highlighted party is quite simply the party at the top of the list from the information which is provided to us for coding purposes, pursuant to state law and ballot order. In that version the poll worker is prompted to select a party for the voter before he or she touches "Voter Signing on Paper - Issue Application" on the poll book. While the Republican Party is the first listed option based on prescribed ballot order, the poll worker is, of course, able to select the correct party as requested by the voter, before he or she selects "Voter Signing on Paper - Issue Application." If for any reason the poll worker does not properly highlight the correct party, as requested by the voter, it is possible that the poll worker may inadvertently record the incorrect party selection for a voter. Please note that the voter may ultimately have received the correct ballot as highlighting the incorrect party on the electronic poll book does not necessarily mean the voter received the incorrect ballot. The actual issuance of the ballot is a separate step.

Our goal, as your vendor, is to ensure that you have the tools you require to make this process simple and intuitive for your poll workers. The enhanced version of software will not allow the poll worker to move forward until the political party is physically selected. We will work with Davidson County to install this version of software in advance of any future primary elections. I would also like to note that there have been reports that Shelby County did not "program" their units in the same manner as Davidson County. It is true that Shelby did not experience the same issue; however, it was not due to a "programming choice," but rather stems from the fact



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11208 John Galt Blvd  
Omaha, NE 68137, USA  
402.938.1300 | [media@essvote.com](mailto:media@essvote.com)

that Shelby currently uses a version of software that operates slightly differently from the version used in Davidson.

Please be assured we take this issue very seriously. We would like to schedule a meeting with you and your staff to review the modified screen changes described above and to partner with you to ensure that the voters and poll workers of Davidson County can have complete confidence in the voting process.

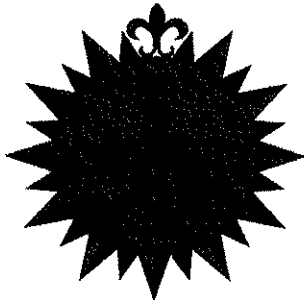
Thank you for your commitment to excellence in elections. Please let us know if we can provide you with any additional information. We look forward to meeting with you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew E. Nelson', written in a cursive style.

Matthew E. Nelson  
Senior Vice President, Corporate Sales  
Election Systems & Software

# EXHIBIT 2



**METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY**

**OFFICE OF INTERNAL AUDIT**

**Professional Audit and Advisory Service**

**FINAL REPORT**

**Audit of the Davidson County Election Commission  
July 1, 2010 through December 31, 2012**

Date Issued: April 17, 2013

Office Location and Phone Number  
222 3<sup>rd</sup> Avenue North, Suite 401  
Nashville, Tennessee 37201  
615-862-6110

*The Metropolitan Nashville Office of Internal Audit is an independent audit agency reporting  
directly to the Metropolitan Nashville Audit Committee*

# EXECUTIVE SUMMARY

April 17, 2013

The Metropolitan Nashville Office of Internal Audit performed an audit of the processes and controls in place at the Davidson County Election Commission. Subsequent to the start of this audit project, the Coordinator of Elections for the Tennessee Secretary of State initiated a review of Davidson County Election Commission practices. A separate special report addressing specific concerns not included in the scope of this audit will be forthcoming from the Coordinator of Elections.

| Results in Brief  | Key Recommendations  |
|---|--|
| <p><u>Election Process</u></p> <ul style="list-style-type: none"> <li>• <i>Were controls to ensure the integrity of the election process efficient and working as management intended?</i></li> </ul> <p><b>Yes.</b> The Office of Internal Audit staff attended poll worker training, reviewed controls surrounding voter registration, voter machine maintenance, security, and election canvassing. Controls were in place and working as management intended.</p> <p><u>Fiscal Resources</u></p> <ul style="list-style-type: none"> <li>• <i>Were the procedures followed in the procurement of the 440 electronic poll books in compliance with Metro Nashville Purchasing Code and Regulations?</i></li> </ul> <p><b>Generally yes.</b> The procurement and contract development process was followed for the purchase. However, purchase orders were not used prior to shipment of goods. <li>• <i>Were fiscal resources such as personnel time, operational expenditures, and capital and tracked assets being managed?</i></li> <p><b>Generally yes.</b> A review of payroll, timekeeping, purchasing, and procurement card transactions showed that management of the Davidson County Election Commission were being good stewards of funds appropriated to support election activities. <li>• <i>Have previous audit recommendations from the Tennessee Comptroller's Division of County Audit report <u>Limited Review of Information System Controls</u> dated June 8, 2008, been implemented?</i></li> <p><b>Generally no.</b> A review of the status of implementation showed that only two out of the seven accepted recommendations were implemented.</p> </p></p> | <p><u>Election Process</u></p> <ul style="list-style-type: none"> <li>• Continue the practice of self-evaluation and improving the election processes by reviewing election risks along with opportunities for improvement.</li> <li>• Enhance information security practices.</li> </ul> <p><u>Fiscal Resources</u></p> <ul style="list-style-type: none"> <li>• Use purchase order to request goods and services.</li> <li>• Verify invoice rates against contract schedules.</li> <li>• Ensure procurement card purchase policy guidelines are followed.</li> <li>• Ensure the staff responsible for hiring poll workers is not also responsible for poll worker payroll processing.</li> <li>• Maintain capital and valuable equipment listings.</li> </ul> <p>Management's response can be seen in Appendix A, page 29.</p> |

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## INTRODUCTION

### ***Audit Initiation***

Members of the Metropolitan Nashville Council requested an audit of the Davidson County Election Commission after errors were observed with the implementation of electronic poll books at the August 2012 primary election. The audit request was approved by the Metropolitan Nashville Audit Committee on September 25, 2012, and was agreed to start after the completion of the November election in December 2012. Subsequent to the start of this audit project, the Coordinator of Elections for the Tennessee Secretary of State initiated a review of similar matters of concern. The Office of Internal Audit coordinated efforts with the Coordinator of Elections Office throughout the course of this audit. A separate report addressing specific concerns not included in the scope of this audit will be forthcoming from the Coordinator of Elections.

### ***Background***

The United States Congress has authority under the Constitution to regulate presidential and congressional elections and to enforce prohibitions against specific discriminatory practices in all federal, state, and local elections. At the state level, individual states are responsible for the administration of both federal and their own elections. States regulate the process, including for example, the adoption of voluntary voting system guidelines, the state certification and acceptance testing of voting systems, ballot access, registration procedures, absentee voting requirements, the establishment of voting places, the provision of Election Day workers, and the counting and certification of the vote. Election policy and procedures are legislated primarily at the state level, with administration of the election process carried out by the Davidson County Election Commission.<sup>1</sup>

Administering an election is a year-round process involving the following stages:<sup>2</sup>

- *Voter registration.* Election officials register eligible voters and maintain voter registration lists using the *Election Systems and Software MegaProfile* system. This includes assigning voters to voting precincts based on voter declared residency.
- *Election administration.* Election officials review and qualify candidate petitions, prepare for various elections by arranging for polling places, recruit and train poll workers, design direct recording electronic touch screens, optical scan, and audio ballots, prepare and test voting equipment for use in casting and tabulating votes.
- *Absentee and early voting.* Election officials permit eligible citizens to vote in person or by mail before Election Day.
- *Vote casting.* Election Day activities include opening and closing polling places and assisting voters in casting votes.

<sup>1</sup> GAO, *Elections Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to Be Completed*, GAO-05-956 (Washington D.C.: September 2005).

<sup>2</sup> Updated using information obtained from reference cited in footnote 1 above.

- *Vote counting and certification.* Election officials tabulate the cast ballots from touch screen machines and release preliminary results to the public on Election Day. Subsequent to Election Day, election officials will tabulate early voting touch screen machine votes and all absentee optical scan ballots. Election officials will determine whether and how to count optical scan ballots that cannot be read by the vote counting equipment. Provisional ballots were manually counted by a Provisional Counting Board. The Davidson County Election Commission will certify the final vote counts, and perform recounts, if required.
- *Voter history.* Election officials maintain a history of voting participation using the *Election Systems and Software Megaprofile* system. For primary elections the voter declared political party is recorded.

The Administrator of Elections keeps voter registration records, maintains voting histories for each voter, and provides information concerning voter registration, absentee voting, elections, campaigns, and campaign financial disclosures. The Administrator of Elections also qualifies prospective candidates for ballots and trains poll officials.

Voting machine warehouse employees, separate from the Administrator of Elections, store voting machines and perform maintenance on the machines year round. They prepare voting machines for elections and work to obtain suitable voting locations. Warehouse employees are also involved in designing ballots, conducting elections, and tallying machine recorded election results.

#### Locations

The Davidson County Election Commission maintains offices in three locations.

- Metro Office Building – Main Office
- Voting Machine Warehouse
- Metro Southeast Complex – Poll Recruiting and Management

### **Organizational Structure**

The Davidson County Election Commission is governed by five commissioners appointed by the State Election Commission for a two year term. The commissioners are charged with ensuring compliance with state election laws and operating within Metro Nashville's purchasing and budgetary laws. The commission appoints the Administrator of Elections. The Administrator of Elections is responsible for managing all election commission operations and personnel. The Davidson County Election Commission has 20 full-time employees, two part-time employee and during elections several hundred temporary workers to assist with the election process.

The Davidson County Election Commission also approves election plans, certifies election results, and participates in professional

organizations. A diagram of the organization can be seen at Appendix A.

## **Information Systems**

Information systems used at the Davidson County Elections Commission are *EnterpriseOne*, *Election Systems and Software's iVotronic*, *Unity*, and *MegaProfile Voter Registration Election Management* systems.

### *EnterpriseOne*

*EnterpriseOne* is the primary accounting software system used to record and report all financial reporting transactions for Metro Nashville. The Davidson County Election Commission utilizes *EnterpriseOne* for processing payroll, invoices, and department cost management.

### *iVotronic Touch Screen Voting System*

*iVotronic* is used on touch screen voting devices to record ballots cast for any given election. It presents to voters election information set-up using the *Unity Election System* software.

### *Unity Election System*

The *Unity™ Election System* is a complete suite of solutions for total election management. The system supports a jurisdiction's election needs, including:

- Creating and maintaining a central database of jurisdiction and election information.
- Formatting ballots and printing ballots on demand.
- Programming election equipment.
- Collecting and reporting election results.

### *M650 Optical Scanner*

The *M650 Optical Scanner* is used to tabulate manual ballots where votes are cast by filling in ovals. This system interfaces with the *Unity Election System* software through zip disks and drives.

### *MegaProfile Voter Registration Election Management*

*MegaProfile Voter Registration Election Management* software is an integrated suite of programs designed to help automate and protect the integrity of the elections process. It allows election officials to easily perform many election related tasks from processing registrant applications to preparing rosters; from handling absentees to staffing an election; from tracking petitions to storing signature and document images.

### *Electronic PollBook System ExressPoll-5000*

*Electronic PollBook System ExressPoll-5000* is a combination tablet hardware device and software intended to be used as the official precinct voter list, creation of application for ballot, and voter history

capture. Additional functionality includes voter precinct look-up for all of Davidson County registered voters.

#### Automated Election System

The system used by the Tennessee Secretary of State as a depository of registered voters state-wide. The Davidson County Election Commission *MegaProfile* system manually interfaces with this system daily.

### **Financial Information**

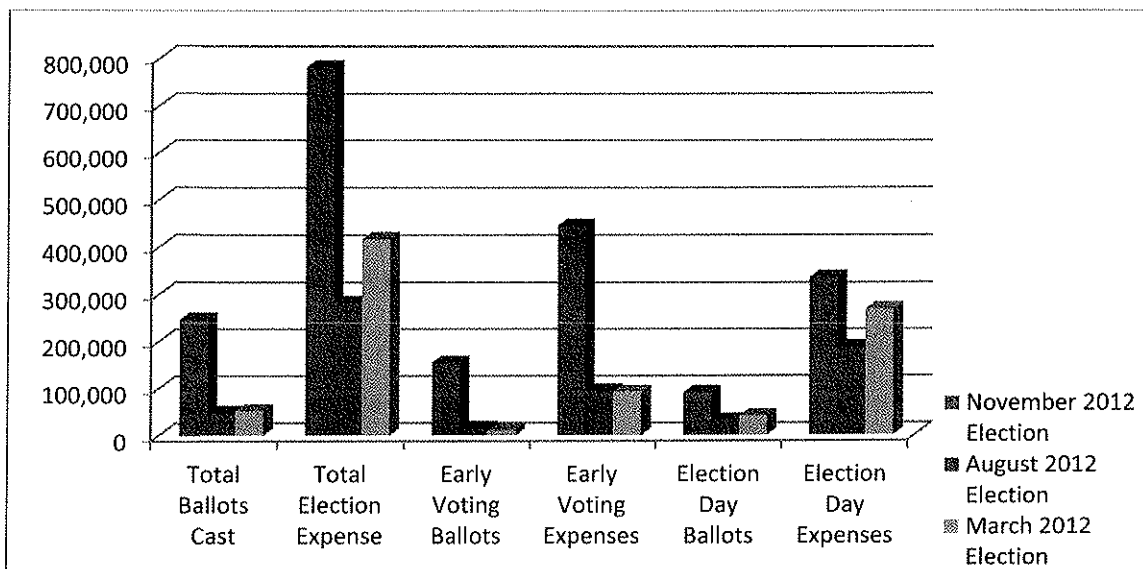
Actual expenditures for fiscal years 2011 and 2012 averaged \$3.3 million. For fiscal year 2012 labor for daily operations accounted for 50 percent or \$1.6 million with an additional \$545 thousand or 17 percent expended for temporary poll workers.

#### **Exhibit A – Davidson County Election Commission – Financial Highlights**

|                           | Fiscal Year<br>2011 |                    | Fiscal Year<br>2012 |                    |
|---------------------------|---------------------|--------------------|---------------------|--------------------|
| Revenues & Transfers      | Budget              | Actual             | Budget              | Actual             |
| Revenues & Transfers      | \$ 28,000           | \$ 31,732          | \$ 649,200          | \$ 442,462         |
| Expenditures              |                     |                    |                     |                    |
| General Fund              | 3,610,600           | 3,330,859          | 3,983,400           | 3,260,492          |
| 4% Reserve                | 0                   | 0                  | 405,000             | 0                  |
| <b>Total Expenditures</b> | <b>\$3,610,600</b>  | <b>\$3,330,859</b> | <b>\$4,388,400</b>  | <b>\$3,260,492</b> |

Source: Metropolitan Nashville's EnterpriseOne Financial System

#### **Exhibit B – Davidson County 2012 Election Comparison Highlights**



Source: Davidson County Election Commission

**Exhibit C – Top Ten Vendors/Contractors between July 2010 and February 2013**

| Vendor                                | Total       | Purpose                                      |
|---------------------------------------|-------------|--|
| 1. Election Systems & Software Inc    | \$1,496,985 | Voting management and machine software       |
| 2. AXIS Direct                        | 322,147     | Voter registration card printing and mailing |
| 3. The Tennessean                     | 161,845     | Mandatory election related public notices    |
| 4. Ted R Sanders Moving and Warehouse | 113,853     | Voting machine logistics                     |
| 5. Ricoh USA                          | 97,345      | Printing and copier services                 |
| 6. Inclusion Solutions LLC            | 23,380      | Printing and binding                         |
| 7. A Z Office Resource Inc            | 21,246      | Office Supply                                |
| 8. Advertising Vehicles               | 15,370      | Election Advertisement                       |
| 9. Athens Paper Co.                   | 13,454      | Printing/Binding                             |
| 10. Nashville Electric Service Co     | 13,001      | Electric bills                               |

*Source: Metropolitan Nashville's EnterpriseOne Financial System*

## OBJECTIVES AND CONCLUSIONS

1. *Were controls to ensure the integrity of the election process efficient and working as management intended?*

**Yes.** The Office of Internal Audit staff attended poll worker training, reviewed controls surrounding voter registration, voter machine maintenance, security, and election canvassing with the following observations impacting the overall conclusion.

The management of the Davidson County Election Commission was actively engaging staff and third parties to identify potential areas for improvements in future elections. Staff self-review and third party election observers identified several areas for potential improvement from the November 2012 Election Day. Precinct boundary changes along with a high number of voters requiring change of addresses, shortage of pre-printed forms, shortage of poll workers, shortage of parking, and shortage of central office phone trunk lines aggravated customer service for the November 2012 Election Day. The November 2012 election was still achieved, notwithstanding these challenges.

### Election Process Controls

Employee Talent - The Davidson County Election Commission has a competent and experienced staff familiar with the election process. Additionally, poll workers were provided detail training and written desk guides to help ensure procedures were followed. Poll workers for the November 2012 Election Day were understaffed by over 100 workers. The Davidson County Election Commission continues to face difficulties in recruiting poll workers (see Observations A).

Voter Registration – The voter registration list was updated from information provide by the Tennessee Secretary of State related to voter's registration in other counties, deaths, felony convictions, or registration in 21 other states. A review of the daily transactions required to be submitted to the Tennessee Secretary of State Election Division was conducted from January 2011 to January 2013. No exceptions were noted.

A confirmation of address was sent to voters whose voter registration card was returned by the United States Postal Service to the Davidson County Election Commission. This process to improve the accuracy of voter records was delayed until after the November 2012 election because of instructions received from the Coordinator of Elections for the Tennessee Secretary of State. A random sample of 50 addresses were reviewed to ensure that *MegaProfile* had been programed to assign the correct voting precinct, council district, school board district, state senate district,

state house district and US congressional district. No exceptions were noted.

Also, similar information was provided from the Davidson County Criminal Clerk's Office and the Metropolitan Nashville Public Health Department. The *MegaProfile* system will automatically create a letter to be sent to voters, whose voter status has been changed for moving out of county, moving out of state, or a felony conviction. A random sample of 50 records purged within *MegaProfile* was reviewed to ensure that there was supporting documentation for the purge. No exceptions were noted. Even though the *MegaProfile* system can provide an audit trail of changes made to voter registration information, the log was not being used to verify all changes were accurate (see Observation A).

Controls to help ensure registration forms issued by third party voter registration groups were returned for processing did not exist. Also, confirmation procedures to help ensure voters registering at Department of Safety locations were processed completely by the Davidson County Election Commission did not exist (see Observation A).

The *MegaProfile* software release 2.4 used by Davidson County Election Commission for maintaining voter registration information and voter history was approved for use in the State of Tennessee.

A review of security roles was conducted for the *MegaProfile* system to ensure that employee security rights were based on business needs to perform their daily functions. Some issues in user logical access to the system were found (see Observations A and B).

Voter Machine Maintenance – The *iVotronic* voting machine version 9.1.4 and *Unity* software system release 5.2.4, used by the Davidson County Election Commission, was approved for election use in the State of Tennessee

Davidson County Election Commission machine technicians stated they ran public noticed pre-election tests on all voting machines used in the November 2012 election. Logic and accuracy test were based on relying upon the function built into each voting machine. However, results from these tests were not documented for the November 2012 election. Leading practices advocate, pre-election, day of election, and post-election documented test (see Observation A).

Poll Worker Training – The Office of Internal Audit attended training provided for Officer of Elections, Change of Address Officials, Application Clerks and Precinct Registrars using Paper Poll Books, and Machine Operator training sessions. The training material was planned, professionally delivered, and provided workshops for change of addresses using the electronic poll book for reference.

Vote Casting - Election official issue an *Application for Ballot* after verifying the voter's name was on the *Precinct Poll Book* and the registered voter had not voted early or requested an absentee ballot. Once the voter completes an affidavit of eligibility to participate in the election the voter signs the *Precinct Poll Book* and will be directed to an available voting machine. The machine operator will take the *Application for Ballot* and render the appropriate ballot.

If an eligible voter was not located on a *Precinct Poll Book*, a *Change of Address* form will be completed and the voter provided directions to the correct precinct.

Voters may also be required to complete a *Provisional Ballot* under certain circumstances, such as insufficient voter identification, or voter registration not found on the *Precinct Poll Book*. Additional follow-up by the voter and research by the Davidson County Election staff will take place after Election Day.

The *Application for Ballot* should be initialized by the registrar and the machine operator along with the voter's affidavit signature. Also, the *Precinct Poll Book* should have the voter's signature and registrar's initial to document that the voter completed a ballot on Election Day.

A review of documents from ten randomly selected polling sites showed six out of ten sites with the total number of *Application for Ballots* matching the total number of voters which signed the *Precinct Poll Book*. The other four precincts had differences of more or less than two vote counts. Differences can happen due to voters not signing the *Precinct Poll Book* or voters neglecting to return the *Application for Ballot* to the machine operator.

Early Voting - Early voting sites allow voters to choose whichever location is most accessible to them throughout the county. The early voting period for the November 2012 election took place from Wednesday, October 17, 2012, through Thursday, November 1, 2012. There were twelve early voting sites spread throughout Davidson County and they were typically opened from 8:00 a.m. to 4:30 p.m.

An *Application for Ballot* is printed after verifying the voter's name in the *MegaProfile* system. Once the voter signs the application which serves as an affidavit of eligibility to participate in early voting, the voter will be directed to the next available voting machine. The machine operator will take the *Application for Ballot* and render the appropriate ballot.

Absentee Voting - Individuals who wishes to vote by *Absentee Ballots* must submit a request to election officials. This request must include the individuals name, address, birthday, social security



number, reason for voting absentee, and which election they are requesting to vote in.

Election officials will review the request and supply a voter's affidavit and an absentee ballot to be completed and returned in a pre-address envelope provided. A review of 50 randomly selected voters in *MegaProfile* that were marked as voted absentee was conducted to ensure that the proper request was submitted to election officials and that the individual was a registered voter in Davidson County. No exceptions were noted.

Counting of Votes/Vote Certification - By the end of the Election Day, officials at each polling site record machine public counts from voting machine results tapes to the *Certificate of Results* and approve the results. The voting machine counts will then be transcribed to the *Application for Ballot Report*, where the election officials record the total number of applications issued to voters who voted on machines. The two numbers should be equal.

A review of documents from ten precincts for the November 2012 election showed that five out of ten precincts had the total number of applications matching machine public counts; four precincts had differences of one count. Differences can happen due to voters not casting the final ballot or machine workers neglecting to obtain the *Application for Ballot* from the voter.

One precinct had four application counts more than the machine public counts. Further investigation showed that one machine was opened around 6:30 p.m. on Election Day and received four votes before being closed. This machine with four votes was not listed on the *Certificate of Results* for the precinct. The Davidson County Election Commission machine technician stated this machine was opened at the precinct because the precinct had a long line before the site was scheduled to be closed at 7:00 p.m. The reconciliation performed by the machine technician as part of the vote certification process detected this discrepancy.

2. *Were fiscal resources such as personnel time, operational expenditures, and capital and tracked assets being managed?*

**Generally yes.** A review of payroll, timekeeping, purchasing, and procurement card transactions showed that management of the Davidson County Election Commission were being good stewards of funds appropriated to support election activities. However, additional attention to financial controls will help ensure this practice continues.

#### Procurement

A random sample of 60 purchases was reviewed from the 1,159 purchase made during the 30 month audit scope. Total purchases

were \$1.9 million for this period. Improvements in verification of services and rates were needed (see Observation C).

All 111 procurement card purchases totaling \$18,057 were reviewed. Additional attention to Metro Finance policy was needed (see Observation D).

#### Payroll

Payroll transactions for all regularly staffed employees were reviewed between January 2012 and December 2012. This review was for exceptions to regular pay (i.e. overtime pay, parking reimbursement, cell phone allowance, etc.). No exceptions were noted.

Payroll transactions for poll-workers were reviewed for the August and November 2012 elections by comparing sign-in sheets to the actual payroll detail. Sign-in sheets were used to ensure only those that actually worked were paid. This review showed some poll-workers were allowed to work before they were officially hired (see Observation E).

A review of the process was conducted and a lack of segregation of duties was identified (see Observation E). The Coordinator of Elections for the Tennessee Secretary of State report will address a similar area of concern related to payroll.

#### Time and Attendance

Leave accruals were verified for approvals and accuracy between January 2012 and December 2012 for all eligible employees. Leave forms were compared to payroll detail to ensure they were recorded and approved by a supervisor. There were three instances of missing documentation, six instances of leave being entered incorrectly and 49 instances of leave not being properly approved (see Observation E).

Eligibility of employee accrued leave time was also verified along with accrual amounts for vacation, sick, and personal time between July 1, 2012, and January 31, 2013. There were eight employees that had time that was not deducted from their monthly accruals (see Observation F).

#### Capital and Tracked Assets

Five items on the capital asset listing were not located and documentation of disposal was not available for the items. Also, annual verification of valuable equipment, beside computer workstations, was not practiced (see Observation G).

3. *Have previous audit recommendations from the Tennessee Comptroller's Division of County Audit report Limited Review of Information System Controls dated June 8, 2008, been implemented?*

**Generally no.** The Tennessee Comptroller's Division of County Audit conducted a limited computer security review in 2008 and made eight recommendations, of which seven were accepted by the previous Davidson County Election Commission Administrator of Elections and one by the Metro Department of Information Technology Services. The current Administrator of Elections was not aware of the 2008 security review report. A review of the status of implementation showed that only two out of the seven accepted recommendations were implemented (see Observation B).

Employees have completed the Metro Nashville Basic Security Awareness Training and earlier this year completed Acceptable Use of Information Technology Assets Policy acknowledgements.

4. *Were the procedures followed in the procurement of the 440 electronic poll books in compliance with Metro Nashville Purchasing Code and Regulations?*

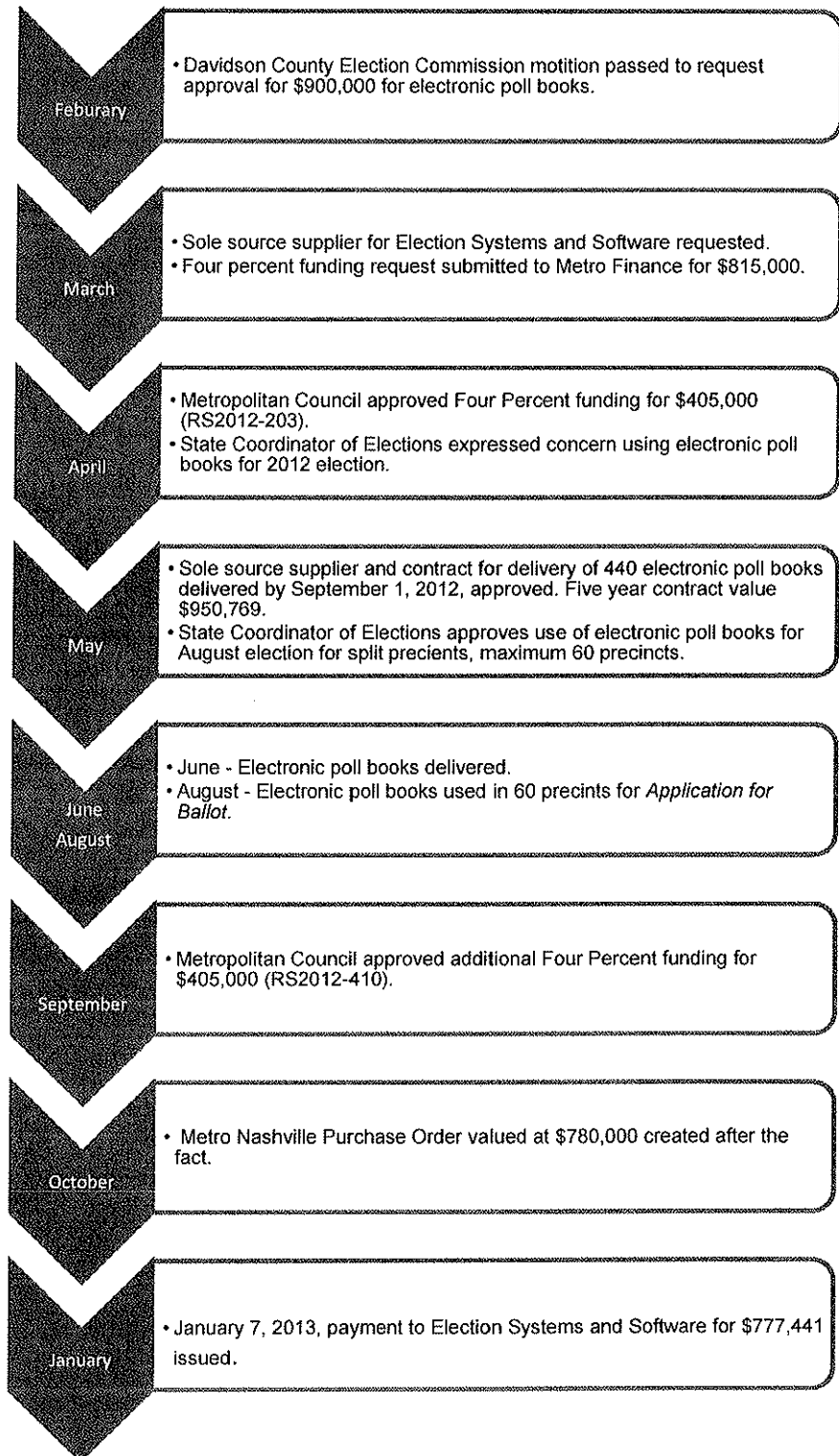
**Generally yes.** The procurement and contract development process was followed for the purchase of the 440 electronic poll books. However, purchase orders were not used prior to shipment of goods based on available funding. The use of purchase orders helps ensure funds are available prior to the purchase order being approved. Purchase orders are Metro's Purchasing Division preferred method of making purchases (Finance Department Policy, Purchasing # 20).

A sole source justification purchase was approved and a contract solicited for the purchase of 440 electronic poll books in May 2012. The contract terms stated 220 poll books were to be delivered by June 15, 2012, with the remaining 220 poll books to be delivered no later than September 1, 2012. The electronic poll books, except for 300 printers, were received by the Davidson County Election Commission in June 2012. Metro Nashville purchase order number 310033 for this delivery was dated October 30, 2012, three months after delivery.

The contract stated that Metro Nashville assumes no liability for any equipment or software delivered without a purchase order. Also, contract Section XII – Termination, paragraph B – Lack of Funding states:

*"Should funding for this contract be discontinued, METRO shall have the right to terminate the contract immediately upon written notice to CONTRACTOR. METRO shall pay CONTRACTOR for all products delivered and services provided up through the effective date of termination."*

## Exhibit D – Electronic Poll Book Purchase Timeline – February 20012 to January 2013



5. *Describe the events and cause of the issue related voter history errors identified by the use of electronic poll books in the August 2012 primary election.*

The Coordinator of Elections for the Tennessee Secretary of State report will address this area of concern.

6. *Was the methodology for determining the allocation of voting machines and voting supplies (provisional ballots, change of address, ballot applications, disability forms, etc.) per precinct for the November 2012 presidential election reasonable?*

The Coordinator of Elections for the Tennessee Secretary of State report will address this area of concern.

## OBSERVATIONS AND RECOMMENDATIONS

### ***A –Emerging Election Process Risks***

Management of the Davidson County Election Commission was actively engaging staff and third parties to provide potential areas for improvements in the election process. Contribution of lessons learned came from staff self-review and third party election observers. Based on literature research, review of audit reports, and observation of the Davidson County Election Commission processes, emerging risks and/or opportunities for improvement in the election process were observed as follows:

#### *Voter Registration*

- Provide a confirmation receipt for in-person registration at the Davidson County Election Commission office.
- Log number of registration forms provided to third party registration groups to help ensure all completed forms are returned.
- Add the recommended quantity of forms to the precinct supply check lists.
- Review all changes to a voter status within the *MegaProfile* application using the system audit trail.
- Monthly obtain a list of new registered voters flagged at Department of Motor Vehicle locations and reconcile this list to registered voters in the *MegaProfile* application.
- Add an effective date to the voter registration card.
- Review the logical security for the *MegaProfile* and *Unity* applications to ensure least privileges are implemented whenever practicable.
- Coordinate with Election Systems and Software to determine if additional security features can be implemented in *MegaProfile*.

#### *Vote Counting and Certification*

- Ensure total reported voter counts are consistent between the Tennessee Secretary of State and Davidson County Election Commission internet sites.
- Enhance election canvassing documentation by creating a cross-walk between Certification of Results and vote tally sources.

#### *Vote Casting*

- Coordinate with Metro Nashville management the possibility of creating a trained employee pool from Metro Nashville entities to serve as contingency and/or supplement for Election Day poll workers.
- Continue to find accessible voting locations with ample parking.

- Develop logic and accuracy testing scripts to ensure *iVotronic* voting machines work as intended for pre-election and post-election machine testing. Test results should be retained for the same period as other election related documents.
- Develop acceptance testing scripts to ensure critical functionality works as management intended for changes to electronic poll books, *Unity*, and *MegaProfile* software functionality.
- Establish advocacy programs to promote the efficiency and reliability of electronic poll books, and voter change of address processing requirements.
- Ensure an independent review and verification of direct reporting electronic ballot design is performed prior to submission for review with the State Coordinator of Elections.

Other

- Utilize *EnterpriseOne* job costing functionality to track cost associated for individual elections.

Other practices that would require additional legislation and/or voter paradigm change include internet self-registration or change of address, elimination of voter registration list and/or voter history requirements, allow same day of election voter registration, primarily use vote by mail for conducting elections, or establish change of address election deadlines.

Criteria:

- U.S. Election Commission, Election Management Guidelines.
- Prudent Customer Service.
- Continuous Quality Improvement Practice.

Risk:

- Citizens could be disenfranchised from participating in the democratic process.
- Individuals could be allowed to participate in the election process when not qualified to do so.

Recommendation:

Management of the Davidson County Election Commission should continue the practice of self-evaluation and improving the election processes by continuously reviewing election risks along with opportunities for improvement.

## ***B - Prior Audit Recommendation Implementation***

The Tennessee Comptroller's Division of County Audit conducted a limited computer security review in 2008 and made eight

recommendations, of which seven were accepted by previous Davidson County Election Commission Administrator of Elections and one by the Metro Department of Information Technology Services. The current Administrator of Elections was not aware of the 2008 security review report. A review of the status of implementation showed that only two out of the seven recommendations were implemented

These recommendations can be summarized into two broader categories, information security and business continuity.

*Information Security (Included in all recommendations except recommendation two):*

The existing user logic access rights to the voter registration program *MegaProfile* was cumbersome and redundant in user group definitions and permission assignments. Three users were assigned with supervisor rights which were not necessary for the user's daily operation. Two users were found not needing access in the system. Users were assigned to multiple groups resulting in extended application privileges which were not all needed for daily operation. There were also several generic accounts set up which decreases the accountability of the users using these accounts.

*MegaProfile* has an audit function to identify changes made to each record. Management of the Davidson County Election Commission was not reviewing this report for validation.

Metro Nashville had an Acceptable Use of Internet Policy at the time of the prior audit. This policy has been revised since then. None of the employees interviewed were aware of the existence of the policies, nor remember signing the Acceptable Use of Information Technology Assets Policy at the time of the audit. Employees have completed the Metro Nashville Basic Security Awareness Training and earlier this year completed Acceptable Use of Information Technology Assets Policy acknowledgements.

Since the last audit, Metro Information Classification Policy and Information Labeling and Handling Policy were developed. The Davidson County Election Commission did not have a formal classification of information that the staff handled every day. Confidential information, such as voters' social security number was handled based on employees' self-consciousness in information security.

*Business Continuity and Disaster Recovery (recommendation two):*

Several employees did not know the existence of a business continuity and disaster recovery plan. The existing plan was developed in 2007 and revised in 2008 after the prior audit. This plan was developed using the framework provided by Metro Nashville's General Services Department. While the plan did provide procedures to prepare for occurrences of some natural disasters, it did not address risks which might hinder the mission of the Davidson County Election Commission,



such as the loss of election results due to unforeseeable interruptions on election days, or if an election could not be conducted on scheduled days due to natural or human disasters.

*Criteria:*

- Limited Review of Information System Controls, May 2008, Tennessee State Comptroller of the Treasury.
- Metro Nashville Information Classification Policy, Information Labeling and Handling Policy, and Acceptable Use of Information Technology Assets Policy.
- Prudent business practice.

*Risk:*

- Lack of formal policy and procedure, and employee awareness regarding confidential information handling might result in misuse of confidential information.
- Without properly designed business continuity plan and disaster recovery plan, and employee awareness of the plan, Davidson County Election Commission's mission might be hindered when unforeseeable incidents occur.

*Recommendation:*

Management of the Davidson County Election Commission should:

1. Incorporate a component of information security procedure into its existing Human Resources manual to define public and confidential information in accordance with Metro Nashville's Information Classification Policy. The manual should provide instructions on how to handle these types of information.
2. Assign user access rights to computer systems (*MegaProfile*, *Unity*, and *Electronic Poll Book*) based on business functions and ensure least privilege.
3. Incorporate information security training into poll worker training manuals.
4. Periodically review transactions within *MegaProfile* for accuracy and supporting documentation.
5. Review the existing Business Continuity and Disaster Recovery plan so that it is aligned with Davidson County Election Commission's mission statement. The following items should be addressed in the plan:
  - Loss of election results due to unforeseeable interruptions.
  - Procedures if an election could not be conducted on scheduled days due to natural or human disasters.
  - Assign specific responsibilities to specific functional positions in the department

- A schedule for plan review and training. The plan should be made known to all employees to be effective when needed.
  - Relevant procedures should be incorporated into poll worker training materials.
6. Coordinate with Election Systems and Software to determine if additional security measures can be implemented in the *MegaProfile* system.

## **C - Improve Procurement Procedures**

Verification of services and rates was not consistently being performed prior to payment for goods and services. A random sample of 60 purchases was reviewed from the 1,159 purchase made during the 30 month audit scope. Total purchases were \$1.9 million for this period. Areas of concern from this review were as follows:

- Purchase orders were not consistently created and used prior to procurement of goods and services.
- Documentation was not available demonstrating that payments for 19 polling sites were verified against a listing of polling sites used for the November 2012 election.
- An updated Letter of Delegated Purchasing Authority was not on file with Metro Nashville's Procurement Division prior to February 2013. An updated Letter of Delegated Purchasing Authority was processed after this issue was brought to the Administrator of Election attention.

### *Criteria:*

- Metropolitan Nashville Finance Purchasing Policy Number 20, Purchasing Policy, states a Purchase Order is the preferred method of making purchases.
- Metropolitan Nashville Finance Delegation of Purchase.

### *Risk:*

With lack of proper management oversight, the risk of misappropriation of Metropolitan Nashville assets increases.

### *Recommendation:*

Management of the Davidson County Election Commission should:

1. Utilize purchase orders prior to purchases and ensure funds are available for services or goods ordered.
2. Ensure goods or services are received, and rates align with agreed upon terms prior to payment for goods or services.
3. Ensure a Letter of Delegated Purchasing Authority remains on file whenever a new Administrator of Elections takes office and all purchases abide by the dollar limit thresholds for delegated

purchasing authority outlined in Metro Nashville's Procurement Code.

### ***D – Improve Metro Procurement Card Procedures***

Management control to prevent potential abuse of procurement card usage should be improved. All 111 procurement card purchases for 30 months totaling \$18,057 were reviewed and the following issues were observed:

- No evidence of preapproval or post approval was presented for 103 purchases, although each purchase was reviewed by the Finance Manager.
- The individual purchase limit of \$250 was exceeded on 20 purchases totaling \$11,181, or 18 percent of all procurement card purchases.
- Two receipts were missing.
- Documentation listing participants for 33 food purchases totaling \$5,512 was unavailable. However, the Administrator of Election had approved, in writing, food purchasing as "special events" for Election Days where "work and lunch" was needed.
- Sales taxes were paid on eight purchases with total sales tax of \$44.

#### *Criteria:*

- Metropolitan Nashville Finance Policy #19 – Credit Card, Section 6 states:
  - d) *Each charge shall be reviewed and approved by the Department Head or designee who does not have a credit card. If the Department Head is a cardholder their charges shall be reviewed by the Finance Department Director or designee.*
  - e) *Documentation supporting charges to the credit card should be readily available for review by the Internal Audit Staff and/or the Department of Finance's Office of Financial Accountability staff or their designees.*
- Metro Nashville Finance Delegation of Purchase.

#### *Risk:*

With lack of proper management oversight, the risk of misappropriation of Metro Nashville assets increases.

#### *Recommendation:*

Management of the Davidson County Election Commission should align procurement card practices with Metro Finance Policy # 19, Credit Card Policy by:

1. Ensuring all credit card purchases are approved within the authority delegated by the Metro Nashville Purchasing Agent.
2. Instructing cardholder to retain all receipts and document the government service delivery purpose for credit card purchases.
3. Attaching documents required for all purchases from local restaurants.

### ***E - Strengthen Controls for Payroll Entry and Leave Approval***

The duties of recruiting, hiring, assigning, and approving payroll for poll-workers were not segregated. The same employees that were tasked with recruiting and hiring poll-workers also informed the Finance Manager who should be paid and the amount to be paid.

The lack of segregation of duties also attributed to assigning poll-workers before they were officially hired. The Office of Internal Audit reviewed poll-worker payroll detail in *EnterpriseOne* to ensure only poll-workers that signed-in on timesheets located at poll locations were paid. Several poll-workers were not paid during the initial payroll to cover poll-workers. Davidson County Election Commission staff stated that those employees did not turn in the necessary paperwork to be officially hired by Metro Nashville.

Davidson County Election Commission guidelines requires all paperwork to be submitted before an individual is allowed to work the polls however since the same employees hire and assign the employees this requirement can be circumvented. It should be noted that Tennessee Election Code allows for same day appointment of election officials to cover for missing workers.

Also, a sample of 420 "exceptions" to standard payroll was traced back to supporting documents with the following results.

- 49 instances or (11 percent) where supervisory signatures were not obtained to document approval for leave time.
- Three instances of missing documentation.
- Six instances of the leave being entered into *EnterpriseOne* incorrectly.

#### *Criteria:*

- Prudent business practice.
- Davidson County Election Commission Guidelines.

*"If you do not send copies of the following documents, you will not be able to work: 1. A copy of your signed Social Security Card and 2. A copy of your valid TN Driver License"*

- *Tennessee Code Annotated § 2-7-105(b)(1), Election Officials, Vacancies, Administration of Oath, Compensation, states:*

*"If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending shall select other persons to fill the vacancies. The persons selected shall be registered voters of the county for which they are to serve. Any person selected to fill a vacancy shall be, to the extent practicable, of the same political party as the person in whose place such person was selected."*

- *Internal Control and Compliance Manual for Tennessee Municipalities, Title 5 Control Activities, Chapter 1, Section 1 states:*

*"Municipal officials should separate duties of employees so that no one person has control over a complete transaction from beginning to end. Work flow should be established so that one employee's work is automatically verified by another employee working independently. When possible, different persons should be responsible for the authorization, recordkeeping (posting), custodial (cash and materials handling), and review procedures, to prevent manipulation of records and minimize the possibility of collusion."*

*Risk:*

- The risk of improper payment for work not rendered increases without proper segregation of duties.
- The risk of abuse of leave policies increases when requests for time off are not properly approved.

*Recommendation:*

Management of the Davidson County Election Commission should:

1. Segregate the recruiting and hiring of poll-workers from payroll functions.
2. Ensure all employees are officially hired before they are allowed to work whenever practicable.
3. Ensure leave requests are properly reviewed and approved by a supervisor.

## ***F – Tracking of Leave Balances***

The Davidson County Election Commission voluntarily follows the Metropolitan Nashville Civil Service Rules when it comes to attendance and leave policies. The office had controls in place to ensure proper procedures were being followed by each employee. However, differences in leave balances reported by the Davidson County Election Commission and audit recalculations were observed for eight employees. The employee leave time was recorded in *EnterpriseOne* but not updated on monthly accrual spreadsheets for the employee.

A part-time employee's only responsibility was to update each employee's monthly accrual spreadsheets based on the payroll detail

entered into *EnterpriseOne*. The *EnterpriseOne* system will automatically keep track of each employee's accruals if a beginning balance is provided. Utilizing this existing feature of *EnterpriseOne* would allow this employee to be repurposed for other needed tasks.

*Criteria:*

Metropolitan Nashville Civil Service Rules, Chapter 4 – Attendance and Leave

*Risk:*

Inconsistent tracking leave balances for employees could cause Metro Nashville to pay employees twice for benefits already taken or could cause additional liability because employees did not receive all the benefits they were entitled too.

*Recommendation:*

Management of the Davidson County Election Commission should:

1. Work with the Metro Nashville Finance Department, Division of Account to start tracking leave accruals through *EnterpriseOne*.
2. Periodically review leave balances for accuracy and validity of leave information.

## **G – Maintenance of Asset Records**

During a physical inventory of items listed on the Metro Nashville Finance Department Capital Asset listing, only four of nine items were located at the Davidson County Election Commission offices. Items not located primarily included information technology hardware such as a Dell PowerEdge Rack, Cisco Router, Xerox Digital System, etc. Management of the Davidson County Election Commission was unable to locate documentation indicating the disposition or current location for these asset items.

Also, a listing of equipment not meeting the capitalization threshold of \$5,000 and may be considered items subject to theft, such as computer printers was not maintained. A listing of computer workstations and laptops assigned to the office was available from Metro Nashville Information Technology Services Department. A sample of ten computer workstations were all observed in the Davidson County Election Commission office.

*Criteria:*

Metro Nashville's Finance Department Policy #14, Capital Assets states:

*"Disposal and transfers of capital assets (non-real Property) must be processed through General Services' Surplus Property Division, which shall be responsible for notifying the Division of Accounts to the update the related fixed asset master records upon completion of the disposal or transfer."*

*"Based upon the transfer forms submitted by departments, the Division of Accounts will transfer capital assets in the centralized accounting system."*

*"Tracked Assets are assets with a dollar value below the capitalization threshold of \$5,000 and should be tracked due to grant requirements, items of a sensitive nature, or items subject to theft."*

*Risk:*

- The security of Metro Nashville assets is compromised when inventory listings are inaccurate.
- Metro Nashville resources may be lost through re-appropriation of assets.

*Recommendation:*

Management of the Davidson County Election Commission should:

1. Work with the Department of Finance, Division of Accounts to ensure capital assets are tracked throughout the assets life cycle. This would include documentation of permanent or temporary transfers, disposals, and/or write-offs of missing or impaired assets.
2. Annually conduct a physical inventory of capital and tracked asset and communicate result for capital assets to the Department of Finance, Division of Accounts.

## GENERAL AUDIT INFORMATION

### **Statement of Compliance with GAGAS**

This audit was conducted from December 2012 to February 2013, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objectives.

We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives.

### **Scope and Methodology**

The audit period was primarily between July 1, 2010, and December 31, 2012. The methodology employed throughout this audit was one of objectively reviewing various forms of documentation, conducting interviews, observations, performing substantive tests and tests of internal controls on the entity's financial information, written policies and procedures, contracts and other relevant data.

### **Criteria**

In conducting this audit, the existing processes were evaluated for compliance with:

- *Tennessee Code Annotated, Title 2, Election Laws.*
- *Tennessee Secretary of State, State Coordinator of Elections Rules.*
- *United States Elderly and Handicapped Act of 1984.*
- *United States Help America Vote Act of 2002.*
- *United States National Voters Registration Act of 1993.*
- *United States Uniformed and Overseas Citizens Absentee Voting Act.*
- *United States Voting Act of 1965.*
- *Metropolitan Nashville Finance Policies.*

### **Staff**

### **Acknowledgement**

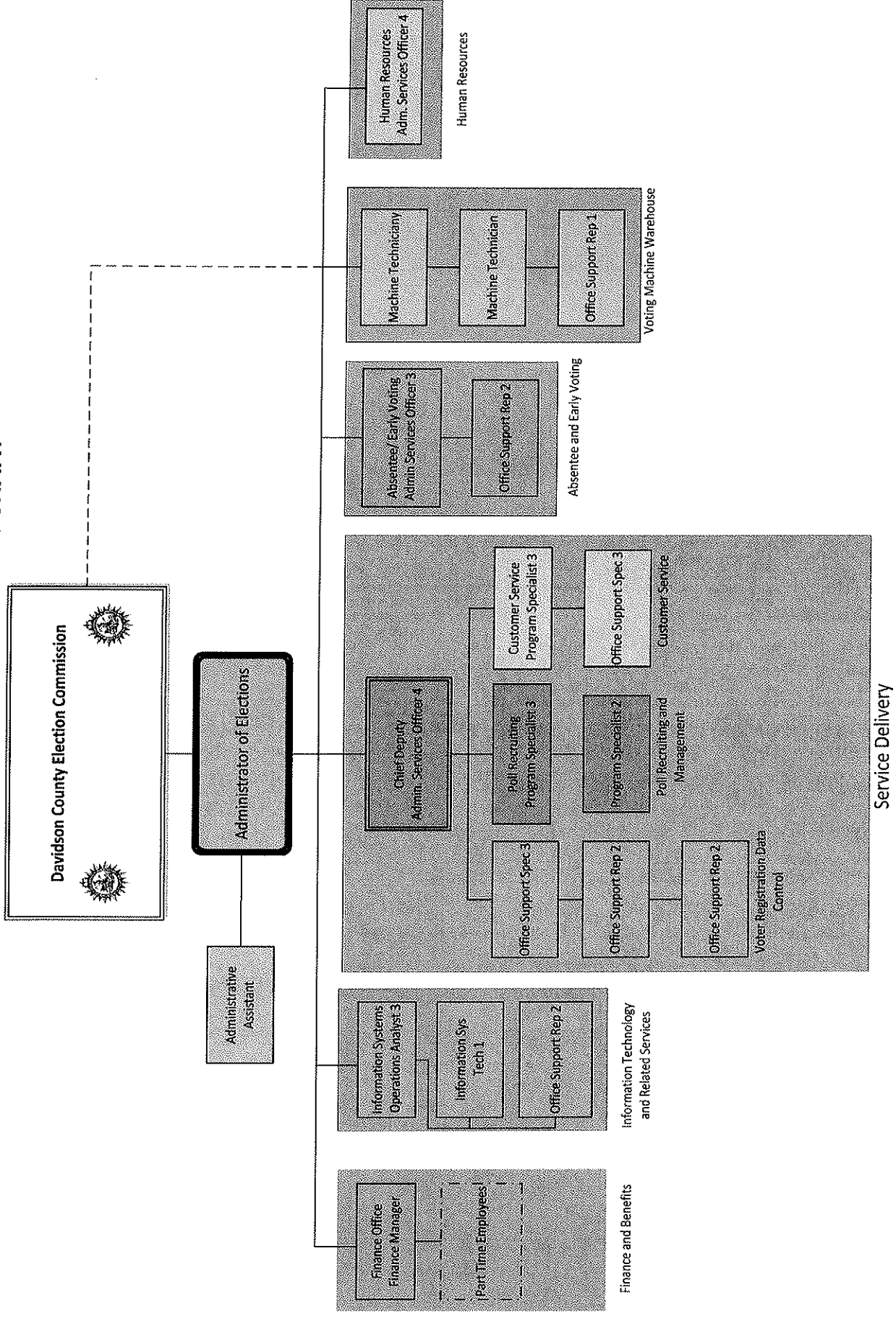
Mark Swann CPA, CIA, CISA, Metropolitan Auditor

Qian Yuan CISA

Tracy Carter CFE



# APPENDIX A. ORGANIZATION CHART



## **APPENDIX B. MANAGEMENT RESPONSE**

- Management's Responses Starts on Next Page -

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**



DAVIDSON COUNTY ELECTION COMMISSION  
PERMANENT REGISTRATION OFFICE  
POST OFFICE BOX 650  
NASHVILLE, TN 37202  
(615) 862-6600

April 15, 2013

Mr. Mark Swann  
Metropolitan Auditor  
Office of Internal Audit  
Metro Southeast  
1417 Murfreesboro Road  
Nashville, TN 37217

Dear Mr. Swann,

This letter will confirm that the Davidson County Election Commission has received the audit report issued by the Office of Internal Audit. My Staff and I were pleased with the many positive comments contained in the report in regards to the operation of the Davidson County Election Commission. We also appreciate the professionalism and objectivity you, Qian Yuan and Tracy Carter demonstrated. We acknowledge and agree with the majority of the recommendations contained in the report and have begun the process of putting those recommendations in to practice.

It has been a pleasure working with you and your staff. The manner in which the audit was conducted certainly made this a positive exercise for the Davidson County Election Commission.

Please let me know if you need further assistance.

Best regards,

A handwritten signature in cursive script, appearing to read "A.U. Tieche".

Albert U. Tieche  
Administrator of Elections

AUT/cm



# **Audit of the Davidson County Election Commission Management Response to Audit Recommendations**

| Audit Recommendation  |  | Response to Recommendation/Action Plan  | Assigned Responsibility  | Estimated Completion  |
|---|--|---|--|---|
| <b>A.</b> Management of the Davidson County Election Commission should continue the practice of self-evaluation and improving the election processes by continuously reviewing election risks along with opportunities for improvement.   |  | <b>Accept.</b> This process is ongoing and will remain in place.  | All  | Continuing  |
| <b>B.</b> Management of the Davidson County Election Commission should:   |  | <b>Accept.</b> Include a copy of Metro Nashville's IT Policy in the HR manual.  | HR   | Completed   |
| 1. Incorporate a component of information security procedure into its existing Human Resources manual to define public and confidential information in accordance with Metro Nashville's Information Classification Policy. The manual should provide instructions on how to handle these types of information. |  |   |  |   |
| 2. Assign user access rights to computer systems (MegaProfile, Unity, and Electronic Poll Book) based on business functions and ensure least privilege.   |  | <b>Accept.</b> MegaProfile will require a new set of groups with redesigned classifications. This will require a two day shut down. Unity currently has only 2 users, the machine technicians. EPB has 2 administrators only. | IT Department  | December 2013   |
| 3. Incorporate information security training into poll worker training manuals.   |  | <b>Accept.</b> Add Metro's IT Policy document to Early Voting training materials. Election Day workers do not access this information.  | Early/Absentee Dept.   | February 2014   |
| 4. Periodically review transactions within MegaProfile for accuracy and supporting documentation.   |  | <b>Accept.</b> This is done when a voter card is returned, when changes are made, and when scanning cards.  | Seventeen staff members have permission to review and change incorrect information.              | Ongoing   |
| 5. Review the existing Business Continuity and Disaster Recovery plan so that it is aligned with Davidson County Election Commission's mission statement. The following items should be addressed in the plan:  |  | <b>Partially Accept.</b> Procedures are in place developed by DCEC and Office of Emergency Management to be reviewed and updated.   | OEM and DCEC<br>Building Captains<br>MOB-Bill Hyden<br>MSE-Gaye Hudson<br>Warehouse-Bobby Medley | June 30, 2013<br><br>Poll worker training to be updated February 2014 |
| <ul style="list-style-type: none"> <li>• Loss of election results due to unforeseeable interruptions.</li> <li>• Procedures if an election could not be</li> </ul>  |  | Court order is required to move the date of an  |  |   |

**Audit of the Davidson County Election Commission  
Management Response to Audit Recommendations**

| Audit Recommendation  | Response to Recommendation/Action Plan   | Assigned<br>Responsibility                               | Estimated<br>Completion      |
|---|--|--|------------------------------|
| <p>conducted on scheduled days due to natural or human disasters.</p> <ul style="list-style-type: none"> <li>Assign specific responsibilities to specific functional positions in the department</li> <li>A schedule for plan review and training. The plan should be made known to all employees to be effective when needed.</li> <li>Relevant procedures should be incorporated into poll worker training materials</li> </ul> | <p>election.</p> <p>Plan to be added to HR manual. Annual review schedule.</p>   |  |                              |
| <p>6. Coordinate with Election Systems and Software to determine if social security numbers can be encrypted in the MegaProfile database.</p>   | <p><b>Accept.</b></p>  | <p>IT Department</p>                                     | <p>June 30, 2013</p>         |
| <p><b>C. Management of the Davidson County Election Commission should:</b></p> <ol style="list-style-type: none"> <li>Utilize purchase orders prior to purchases and ensure funds are available for services or goods ordered.</li> </ol>   | <p><b>Accept.</b> Approved training for movement to IPurchase instead of current voucher payment system.</p>   | <p>Finance</p>   | <p>ASAP</p>                  |
| <ol style="list-style-type: none"> <li>Ensure goods or services are received, and rates align with agreed upon terms prior to payment for goods or services.</li> </ol>   | <p><b>Accept.</b> Approved-Study of Contracts, Terms and Policies to be enacted</p>  | <p>Finance, Accounts Payable, Contracts, Procurement</p> | <p>Current and on going.</p> |
| <ol style="list-style-type: none"> <li>Ensure a Letter of Delegated Purchasing Authority remains on file whenever a new Administrator of Elections takes office and all purchases abide by the dollar limit thresholds for delegated purchasing authority outlined in Metro Nashville's Procurement Code.</li> </ol>  | <p><b>Accept.</b></p>  | <p>Finance</p>   | <p>Completed</p>             |
| <p><b>D. Management of the Davidson County Election Commission should align procurement card practices with Metro Finance Policy # 19, Credit Card Policy by:</b></p> <ol style="list-style-type: none"> <li>Ensuring all credit card purchases are approved within the authority delegated by the Metro Nashville Purchasing Agent.</li> </ol>   | <p><b>Partiallyly Accept.</b> We moved away from petty cash closing this program. Our credit card purchases follow section 2 (c) of Delegation of Authority.</p> | <p>Finance</p>   | <p>Completed</p>             |

**Audit of the Davidson County Election Commission  
Management Response to Audit Recommendations**

| Audit Recommendation |  | Response to Recommendation/Action Plan                   | Assigned Responsibility                     | Estimated Completion |
|----------------------|--|--|---|----------------------|
| 2.                   | Instructing cardholder to retain all receipts and document the government service delivery purpose for credit card purchases.  | <b>Accept.</b>   | Finance                                     | Completed            |
| 3.                   | Attaching documents required for all purchases from local restaurants.   | <b>Accept.</b>   | Finance                                     | Completed            |
| <b>E.</b>            | Management of the Davidson County Election Commission should:  | <b>Accept.</b>   | HR/ Poll Coordinator                        | December 2013        |
| 1.                   | Segregate the recruiting and hiring of poll-workers from payroll functions.  |  |   |                      |
| 2.                   | Ensure all employees are officially hired before they are allowed to work whenever practicable.  | <b>Accept.</b> TCA § 2-7-105 allows for emergency hires. | Human Resources, Finance, Poll Coordination | Completed            |
| 3.                   | Ensure leave requests are properly reviewed and approved by a supervisor.  | <b>Accept.</b>   | All management                              | Completed            |
| <b>F.</b>            | Management of the Davidson County Election Commission should:  | <b>Accept.</b>   | Human Resources/Finance                     | Completed            |
| 1.                   | Work with the Metro Nashville Finance Department, Division of Account to start tracking leave accruals through EnterpriseOne.  |  |   |                      |
| 2.                   | Periodically review leave balances for accuracy and validity of leave information.   | <b>Accept.</b>   | Human Resources/Finance                     | Completed            |
| <b>G.</b>            | Management of the Davidson County Election Commission should:  | <b>Accept.</b>   | IT Department                               | July 15, 2013        |
| 1.                   | Work with the Department of Finance, Division of Accounts to ensure capital assets are tracked throughout the assets life cycle. This would include documentation of permanent or temporary transfers, disposals, and/or write-offs of missing or impaired assets. |  |   |                      |

**Audit of the Davidson County Election Commission  
Management Response to Audit Recommendations**

| Audit Recommendation  | Response to Recommendation/Action Plan | Assigned<br>Responsibility | Estimated<br>Completion |
|---|--|----------------------------|-------------------------|
| 2. Annually conduct a physical inventory of capital and tracked asset and communicate result for capital assets to the Department of Finance, Division of Accounts. | Accept.                                | IT Department              | Ongoing                 |

# EXHIBIT 3



## **Response to DRAFT Review of the Davidson County Election Commission**

(The Draft Review which is undated was delivered via e-mail on March 26, 2013.)

I am responding to two parts of the review draft that specifically mentions my name as Chairman of the Davidson County Election Commission.

Coordinator Goins, in an e-mail dated February 4, 2013, sent an invitation to all commissioners of the Davidson County Election Commission. It was not a request for an interview but rather an invitation for the opportunity to be interviewed as Mr. Goins specifically stated, *"Please respond if you want to be interviewed."* It is true that I chose not to request an interview as I have found previous meetings with Mr. Goins to be unproductive. Mr. Goins has publicly made his position clear concerning his animosity towards both the Davidson County Election Commission and my leadership as Chairman; I felt there was nothing to be accomplished should I request such an interview. Had Coordinator Goins requested an interview with me I would have accommodated him.

Mr. Goins also stated that "in advance of the November election" Commissioner Heim "realized that there should be additional early voting hours to serve Davidson County voters, but Chairman Greer refused to call a meeting to consider her proposal." That statement is a misrepresentation of the facts as it was in advance of Election Day but not in advance of the start of early voting. On or about October 24, 2012 which was halfway through the early voting process Ms. Heim did make a request that I call such a meeting. After considerable debate the commission had already voted unanimously on the number of days and the hours that DCEC was to be open for early voting. We were open later hours one more day (4) than in 2008 and increased our Saturday hours from one ½ day to 2 full days. Additionally, 66% of the people who voted in the November election voted early; among some other larger counties we were exceeded by Williamson County with 72%. Only Shelby County (which has considerably more registered voters) was open more hours or had more early vote sites than Davidson County. Prior to my decision, I consulted with our AOE, some commissioners, poll officers and workers as well as some members of the DCEC staff. I was also in the process of visiting every early vote site to assess the situation. With the utmost respect for her request, statistical and empirical information available to me did not support the same conclusion as Commissioner Heim's. On October 25, I notified her via e-mail of my decision but did state that I would "defer to the majority". Since there was not a consensus among the commissioners in favor of a meeting, I did not call one. Further, under the "sunshine law", we are required to give 24 hour notice for a special called meeting. I had commitments on both Friday, October 26 and Saturday October 27; therefore, the earliest we could have met was Monday, October 29, three days before the close of early voting. Statistical data on early voting will be provided elsewhere in the official response.

*Early voting in Davidson County far exceeded all legal requirements and no significant problems occurred during early voting.* In retrospect, I am puzzled as to why the Coordinator is criticizing Davidson County's early voting.

I am submitting this response as an addendum to the official response of the Davidson County Election Commission.

*Lynn Greer*

H. Lynn Greer, Jr.

April 4, 2013

# EXHIBIT 4

**Subject:** FW: Early Voting Totals

**From:** "Lynn Greer" <[REDACTED]>  
**To:** "Patricia Heim" <[REDACTED]>  
**Cc:** "Steve Abernathy" <[REDACTED]>, "albert tieche" <[REDACTED]>  
**Sent:** Thursday, October 25, 2012 9:11:58 AM  
**Subject:** FW: Early Voting Totals

We are down 17,637 voters in 2012 from 2008 totals. If we were being swamped and had huge numbers I could say we need more hours to vote; that is not the case. We have several vote sites that are under capacity: Bellevue, Friendship, Goodlettsville, MOB, Coleman Park and all of our other sites are voting fewer than in '08. We are also open all day on Saturdays. We are open more hours in Davidson County (total of 1,500) than any other county in TN save Shelby who has 20 sites and is about twice as large.

We also have more people voting absentee than before.

I have discussed this in depth with Albert and I simply cannot justify in my mind opening so few additional hours per site with such a low turnout. I will, however, defer to the majority.

Lynn Greer

[REDACTED]

**From:** Steve Abernathy [REDACTED]  
**Sent:** Wednesday, October 24, 2012 8:22 PM  
**To:** [REDACTED]; [REDACTED] Eddie Bryan  
**Cc:** Tieche, Albert (Elections)  
**Subject:** Early Voting Totals

Good Evening Commissioners,

I have been reviewing our **Early Voting data** now that we are half way through that process and to date we have tallied **75,408 votes**. One of the ways to look at productivity is the **average number of Voters processed per hour** by Early voting centers. Listed below is the data for each Early voting center as of this evening for the first seven days of Early Voting.

| Early Voting Center     | Avg # of Voters processed per hour |
|-------------------------|------------------------------------|
| Metro Office -          | 95 voters per hour                 |
| Belle Meade City Hall - | 118 " "                            |
| Bellevue Com Center -   | 104 " "                            |
| Bordeaux Library -      | 118 " "                            |
| Coleman Park -          | 41 " "                             |
| Crossing Event Ctr -    | 99 " "                             |
| Edmondson Pike Lib -    | 135 " "                            |
| Friendship Baptist -    | 37 " "                             |

|                            |   |            |   |   |
|----------------------------|---|------------|---|---|
| <b>Goodlettsville City</b> | - | <b>38</b>  | " | " |
| <b>Green Hills Library</b> | - | <b>126</b> | " | " |
| <b>Hermitage Library</b>   | - | <b>137</b> | " | " |
| <b>Madison Library</b>     | - | <b>120</b> | " | " |

All the Voting Centers combined have averaged **97 voters per hour**. By comparison, in **2008** we averaged **106 voters per hour**. On Wednesday, October 17<sup>th</sup> we averaged **101 Voters** processed per hour and that number has declined steadily except for Tuesday, October 23 when it rose to 98 Voters processed per hour. I would assume this was because of Monday's Presidential debate and voter interest in casting their ballot the next morning.

Let me know if there is anything else you would like to look at on this data. Have a wonderful evening.

**Steve Abernathy**  
**Election Commissioner**

**Subject:** DCEC Draft Review Report - Chain of Emails between Patricia Heim & myself, with copied to Lynn Greer

**From:** Patricia Heim <[REDACTED]>  
**To:** Steve Abernathy <[REDACTED]>  
**Cc:** Lynn Greer <[REDACTED]>  
**Sent:** Thu, 25 Oct 2012 15:03:28 -0000 (UTC)  
**Subject:** Re: More early Voting Analysis

Steve, I think that is already confirmed by using the counts on the days we close at 4:30 since those voters in line at 4:30 are served and included in the daily totals.

Those 4:30 days have generated close to 10k and the counts are 13k or 14k on the days we close at 7:00 PM.

What is apparent is that 3,000 - 4,000 add'l voters are served on days we are open until 7:00 PM.

If there was a post-debate uptick in turnout we should have seen an increase in voters on Wed (a 4:30 day) as compared to other 4:30 closing days - it wasn't there - in fact was lower than Monday - maybe folks go to church on Wed and don't rush to vote?

I assert the uptick on Tuesdays and Thursdays is a direct result of being open exactly when more voters are able to cast their ballots.

There is always an increase in Nov voter turnout beginning the final Sat thru closing of EV so there will be an increase even on 4:30 days  
 C-ya!

**From:** Steve Abernathy [REDACTED]  
**Sent:** Thursday, October 25, 2012 9:23 AM  
**To:** 'Patricia Heim'  
**Cc:** 'Lynn Greer'  
**Subject:** RE: More early Voting Analysis

Patricia,

I am sorry, I didn't remember you mentioning that you would confirm if the EV workers could work longer hours three more nights before extending their hours in our conversation, or in the email string attached below, but I appreciate you seeing that as critical issue.

The Vote totals that Bobby gave us on "Votes cast after 4:30 pm" on Tuesday and Thursday include the Voters in line at 4:30 pm and the Voters that are in line at 7 pm and cast their vote. So in order to accurately count the Voters that would benefit from remaining open to 7 pm, you would have to know the number of voters in line at 4:30 pm that haven't voted yet, and subtract that number from the total number that Bobby provided.

That is the Chief Financial Officer in me making sure we compare "apples to apples". Since it is impossible for us to know that number in hindsight, you really can't use the number of votes cast after 4:30 Bobby Medley provided to make the analysis you performed as a comparison on voter participation.

I am headed to the Mill Creek Greenway to take a nice walk, have a wonderful day,

Steve

**From:** Patricia Heim [REDACTED]  
**Sent:** Thursday, October 25, 2012 9:05 AM  
**To:** Steve Abernathy  
**Cc:** Lynn Greer  
**Subject:** Re: More early Voting Analysis

Certainly, Steve, and that is why I wouldn't agree to extend hours w/out first confirming w/ the EV workers they could work longer on 3 more nights - I said that at the get go.

I do know that we serve every voter in line at time of closing and certainly that happens on 4:30 nights just as much as it happens on 7:00 nights so no matter the closing schedule our officials are working longer than the stated closing time. I would be an inaccurate analysis to count more hours of service on a 7:00 night on a 4:30 night so that is why it is best to focus solely on hours open and voters served so there is consistency of comparison - it's the actuary/accountant in me ..

Having been either on the commission or working as a poll officer in every presidential election since 1996 means I've seen a lot of voter activity - that experience shapes my opinions and my advocacy for the voting public.

I know you have been extremely concerned about the problems we will face on election day so I truly find it odd that we wouldn't be supportive of processing an add'l 12,000 - 15,000 during our final week of early voting by having 3 add'l late evenings.

Kind Regards,

Patricia

**From:** Steve Abernathy  
**Sent:** Thursday, October 25, 2012 8:49 AM  
**To:** 'Patricia Helm'  
**Cc:** 'Lynn Greer'  
**Subject:** RE: More early Voting Analysis

Patricia,

One final issue that I think is equally if not more important. Our Early Voting Poll Workers have made personal plans based on the schedule we approved several weeks ago. As my wife pointed out to me, they have children, grandchildren, etc they have responsibilities for and to suddenly change our Early Voting hours at this late date would significantly impact their plans. They didn't sign up for working 12 hours or more supporting the Voting process for four days in a row. Resources are real people who matter and have lives outside the Election process.

Steve

**From:** Steve Abernathy  
**Sent:** Thursday, October 25, 2012 6:08 AM  
**To:** 'Patricia Helm'  
**Cc:** 'Lynn Greer'  
**Subject:** RE: More early Voting Analysis

Patricia,

Also remember, the doors close at 4:30 pm or 7 pm respectively, but Voters in line are served, so the actual hours of Operation during the last 2.5 hours on days we are open to 7 pm, are much longer, anywhere from 1 hour to 90 minutes. If you plug in that extra time, the volume of Voters processed is not more than the rest of the day. We are asking our Poll Workers to do more than ever before with the Photo ID law. I was fine with them working Tuesday and Thursday from 8 am till 7 pm because they could rest a bit with an 8 am till 4:30 day the next day, but doing it several days in a row is unfair to them. We expect them to work without making any errors and you know fatigue can cause errors to occur.

Respectfully, I am asking you as nicely as possible to drop this issue.

Steve

**From:** Patricia Helm  
**Sent:** Wednesday, October 24, 2012 10:50 PM  
**To:** Steve Abernathy  
**Cc:** Lynn Greer  
**Subject:** Re: More early Voting Analysis

exactly right on the 2.5 hrs vs my error

still makes the service time 133 voters for last 2.5 hours vs. 96 for the other 8.5 hrs in the day

we disagree again on utilization of resources to serve the voting public

**From:** "Steve Abernathy"  
**To:** "Patricia Helm"  
**Cc:** "lynn greer"  
**Sent:** Wednesday, October 24, 2012 8:52:07 PM  
**Subject:** RE: More early Voting Analysis

Patricia,

It is not 1.5 hours, it is 2.5 hours. 4:30 pm to 7:00 pm. The Service Rate for the 12 centers open for 2.5 hours, 30 hours, is 133 voters per hour, not 222 voter per hour. Also, remember, voters in line at 7 pm still get to vote if they are in line, so the time is extended even more, and that same rule applies to voters in line at 4:30 pm. Staying open additional hours is unnecessary in my opinion.

Steve

**From:** Patricia Helm

**Sent:** Wednesday, October 24, 2012 9:09 PM  
**To:** Steve Abernathy  
**Cc:** Lynn Greer  
**Subject:** Re: More early Voting Analysis

Thanks, Steve, but after looking at today's turnout results, I have had a change of heart and thinking focusing on "capacity" misses the mark.

If we were capable of serving 10,000 voters between the hours of 9:00 - 10:00 AM, but they didn't come, that wouldn't convince me we shouldn't open add'l hours until the 10,000 voters appear during the hours of 9:00 - 10:00 AM. It's about offering voting when the public is most likely to use it.

Getting 3,000 - 4,000 add'l voters during an add'l 90 minutes at 12 sites seems well worth it to me.

Using your capacity approach to assess the decision, almost 4,000 votes were cast on Tuesday out of a total of 13,834 (nearly 30% of the day's total). That means these nearly 4,000 voters were served during 18 "man-hours" (12 sites x 1.5 hours/site) compared to 9,800 voters during 114 "man-hours" (12 sites x 9.5 hours/site) when we were open 11 hours from 8:00 AM - 7:00 PM.

So during the 4:30 - 7:00 PM time frame, the equivalent hourly service rate is 222 voters (4,000 voters/18 man-hours) compared to 86 voters during the rest of the day (9,800 votes/114 man-hours). Sure seems we're getting better return on the hours of 4:30 - 7:00 PM than the rest of the day.

I'll take the criticism of adding extra hours on short notice anytime when I can show that is when the sites are best used by our voting public. I think focusing on capacity at selected sites doesn't apply well in this situation.

Thanks again for your thoughts and analysis,

Patricia

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**From:** "Steve Abernathy" <[REDACTED]>  
**To:** [REDACTED] "Lynn Greer" <[REDACTED]>  
**Sent:** Wednesday, October 24, 2012 8:30:42 PM  
**Subject:** More early Voting Analysis

Patricia and Lynn,

Attached is the spreadsheet I have created to do my analysis using the data from Betty. I know AJ wants us to be open more days till 7 pm and Bobby Medley tells me that we are seeing between 3000-4000 votes cast collectively at all Early voting centers between 4:30 - 7 pm on the two days we have been open till 7 pm.

Based on the data, if Coleman Park, Friendship Baptist, and Goodlettsville City Hall increased their Voters per hour to 100 Voters per hour, which is realistic and within their capacity. We would see an additional 3812 vote cast in Coleman Park, 4061 cast in Friendship Baptist, and 3976 cast in Goodlettsville, even closing at the scheduled times we have published. This would be like being open till 7 pm three more days than already scheduled.

Due to this information, I am not inclined to increase our hours of operation at our Early Voting Centers the second half, we already have the capacity to handle more voters. Let me know if you have any other questions.

Steve

**Presidential and State General (Presidential) Election/City of Belle Meade Election, City of Forest Hills Election,  
City of Goodlettsville**

**Election Day - November 6, 2012**

**Oct 17, 2012 thru Nov 01, 2012**

| OCT 17, 2012 RPT NOV 01, 2012 |          |          |         |         |         |         |         |         |         |         |         |          |          |          |         |         |         |         |         |         |         |         |         |          |          |          |         |         |                    |                             |         |                |                |         |         |          |          |
|-------------------------------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|---------|---------|---------|---------|---------|---------|---------|----------|----------|----------|---------|---------|--------------------|-----------------------------|---------|----------------|----------------|---------|---------|----------|----------|
| ID                            | 1        |          | 2       |         | 3       |         | 4       |         | 5       |         | 6       |          | 7        |          | 8       |         | 9       |         | 10      |         | 11      |         | 12      |          | 13       |          | 14      |         | Voters<br>per Hour | Volume per hour<br>Last Day | % Diff  | 2008<br>Totals | GRAND<br>TOTAL |         |         |          |          |
|                               | Mon      | Tue      | Wed     | Thu     | Fri     | Sat     | Sun     | Mon     | Tue     | Wed     | Thu     | Fri      | Sat      | Sun      | Mon     | Tue     | Wed     | Thu     | Fri     | Sat     | Sun     | Mon     | Tue     | Wed      | Thu      | Fri      | Sat     | Sun     |                    |                             |         |                |                | Mon     | Tue     | Wed      | Thu      |
| 1                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 2                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 3                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 4                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 5                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
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| 7                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 8                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 9                             | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 10                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
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| 13                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 14                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 15                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 16                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 17                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 18                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
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| 21                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 22                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 23                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 24                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 25                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 26                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 27                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 28                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
| 29                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00 AM | 6:00 AM | 7:00 AM | 8:00 AM | 9:00 AM | 10:00 AM | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM            | 4:00 PM                     | 5:00 PM | 6:00 PM        | 7:00 PM        | 8:00 PM | 9:00 AM | 10:00 AM | 11:00 AM |
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| 31                            | 11:00 AM | 12:00 PM | 1:00 PM | 2:00 PM | 3:00 PM | 4:00 PM | 5:00 PM | 6:00 PM | 7:00 PM | 8:00 PM | 9:00 PM | 10:00 PM | 11:00 PM | 12:00 AM | 1:00 AM | 2:00 AM | 3:00 AM | 4:00 AM | 5:00    |         |         |         |         |          |          |          |         |         |                    |                             |         |                |                |         |         |          |          |



# Early Voting Comparison by County

| County     | # Registered Voters | Total Hrs Early Voting | # of Sites | Reg. Voter per EV Hour | # Early Votes | % Early to Reg. Voters | Election Day Votes | Total Votes | % Early Voters | Early Voters Per hour | % Turn out to Registered Voters |  |
|------------|---------------------|------------------------|------------|------------------------|---------------|------------------------|--------------------|-------------|----------------|-----------------------|---------------------------------|--|
| Shelby     | 598803              | 2520                   | 21         | 238                    | 232690        | 39%                    | 138419             | 371109      | 62.7%          | 92                    | 62%                             |  |
| Davidson   | 373231              | 1548                   | 12         | 241                    | 155481        | 42%                    | 90573              | 246916      | 63.0%          | 100                   | 66%                             |  |
| Knox       | 265000              | 1064                   | 10         | 249                    | 115142        | 43%                    | 57169              | 172311      | 66.8%          | 108                   | 65%                             |  |
| Williamson | 134550              | 804                    | 6          | 167                    | 65003         | 48%                    | 31403              | 96406       | 67.4%          | 81                    | 72%                             |  |
| Rutherford | 153200              | 636                    | 6          | 241                    | 64428         | 42%                    | 34428              | 98856       | 65.2%          | 101                   | 65%                             |  |
| Montgomery | 93538               | 136                    | 1          | 688                    | 34626         | 37%                    | 21280              | 55906       | 61.9%          | 255                   | 60%                             |  |

**From:** Steve Abernathy [REDACTED]  
**Sent:** Thursday, September 13, 2012 1:35 PM  
**To:** 'Mark Goins'  
**Cc:** [REDACTED]; [REDACTED]; [REDACTED]; 'Eddie Bryan'; [REDACTED]; 'Tom DuBois'; [REDACTED]; [REDACTED]; [REDACTED]; 'Kathy Summers'; 'Tieche, Albert (Elections)'  
**Subject:** Voter issues - Davidson County  
**Attachments:** EPB Precinct Analysis.xlsx

**Mark Goins**  
**Coordinator of Elections,**

Thank you for sharing your concerns about my efforts to get the DCEC to re-consider the use of Electronic Poll Books in November. Respectfully, I have to disagree the Davidson County Election Commission made the right decision to suspend the use of EPB's in November, which is why I voted "No" on the motion in the meeting. The DCEC has worked tirelessly on the EPB issue since it surfaced and compiled data to either prove or dispute the accusations leveled by Tennessee Citizens Action group and several Democratic Politicians. After careful review of that data and my experience as a Poll Officer in several Elections, I have determined the idea that a large number of Democratic voters received a Republican Application for Ballot and actually voted on that Ballot is false.

Two of the Commissioners that voted for the Motion stated they believed the "Perception" of Voting issues with the EPB's was enough to suspend their use in November. If that "Perception" is based on factual data, not exaggerated claims by a special interest group, I could understand and accept that Perception.

**Listed below is a summary of the data that our Staff has reviewed:**

- The EPB's would issue a Republican Application for Ballot if the Precinct Registrar didn't select the Primary the Voter requested. True, this could happen, but only if the Voter didn't inform the Precinct Registrar which Primary they chose to Vote in, and the Precinct Registrar didn't insist they provide that information. In all training for the Precinct Registrars, they are told the Voter must select the Primary in order for them to proceed. This issue has been corrected for future Primaries by ES&S, and as you are aware, November is a General Election, **and no primary selections will be necessary.**
- The Software in the EPB's was not programmed as the DCEC requested which "Opened the Door" for this error to occur. 95% of the Precincts utilizing the EPB's followed their training on requiring the Voter to select the Primary they wanted to participate in, which closed the door on most errors.
- **As to the claim** that many Voters received the Republican Application for Ballot due to this error and actually voted Republican: Comparison of Republican and Democrat Ballots completed in EPB locations and Paper Poll Book locations indicate this is not true. **We are aware of two voters that received a Republican Application for Ballot and actually voted on that Ballot, when they wanted a Democratic Primary ballot.** I sent an email to your office on September 11<sup>th</sup> asking if any other Voters have contacted your office on this issue so we could review and have not received a response.

- **Electronic Poll Book location – Republican Ballots – 40% Democratic Ballots – 58%**
- **Paper Poll Book locations - Republican Ballots – 45% Democratic Ballots – 53%**

- Analysis of the EPB data indicate Voter irregularities in 3 of 60 Precincts – Looby Community Center – 02-04, Trinity Lane UMC – 04-04, & Memorial Lutheran Church – 07-03.  
(see attachment for data)
- —5 Republican Application for Ballot were issued at Looby Community Center, however no Republican Votes were cast.
- 114 Republican Applications for Ballot were issued at Trinity Lane UMC, however 89 of those Voters cast a Democratic ballot and three cast a General Ballot, only 22 voted Republican or 19.2% of Votes cast.
- 24 Republican Application for Ballot were issued at Memorial Lutheran Church, however 12 of those Voters cast a Democratic ballot and 12 casts a Republican Ballot – 6.3%
- —All three of these Precincts were staffed by Democratic Poll Officers
- We have reviewed the Voting History of the 4,867 Republican Ballots cast in EPB locations, and after removing those without a History, and the Voters that received a Republican Application for Ballot, but voted in the Democrat Primary, you have 241 Voters that cast a Republican Ballot for the first time.
- By comparison, similar analysis of our Paper Book voters indicate 386 Voters that self-selected a Republican Ballot with no previous Republican Voting history.
- Based on this information, I believe Daron Hall's assessment stated in his letter could be the key – ***"It should be noted there were not any contested local Democratic races of significant profile"*** on the Democratic Ballot in his precinct. Several Voters with Democratic history voted in the Republican Primary, because the Democratic Primaries of significant profile were not contested.
- Comparing the 14 different Primary races in the August Election – Democrats had only 4 of their primaries with two or more candidates, 9 had only 1 candidate, and one was a Write in only. Republican had 6 races with two or more candidates, 3 with only 1 candidate, and five with Write in only. Based on this information, **the allegations of wide spread problems are clearly false.**

**In order for the EPB programming error to have an impact in the August 2<sup>nd</sup> Primary, you have to believe the following process programming and human errors would have to occur numerous times in several Precincts:**

- The Precinct Registrar would have to ignore the instructions provided in their training & not require the Voter to select the Primary they wanted to vote – and instead hit the Print button on the EPB without selecting a Primary
- Next, the Precinct Registrar would ask the Voter to sign the Republican Application for Ballot, verifying the information
- The Democratic Voter would have to arrive at the Precinct and forget to tell the Precinct Registrar they wanted to Vote in the Democratic Primary – The Voter's Responsibility
- Next the Voter would have to sign the Republican Application for Ballot, not notice the error, and take that document to the Machine Operator. The Machine Operator would select the Republican Ballot on the Voting machine, tell the Voter they had selected the Republican Ballot based on the information provided.
- Finally, the Voter would have to look at the Republican Ballot, not see the Republican Ballot title or recognize that the Democratic Candidates they wanted to Vote for were not listed, not mention that to the Machine Operator, and just push the Vote button on the Machine

Personally, I don't think Voters in Davidson County, whether Republican or Democrat are that uninformed about the Primary Voting Process or the Candidates they wish to Vote for in the Primary.

Based on the data I have seen so far from the EPB locations, it appears that the Primary Ballots in Nashville were processed with better than 99.8% accuracy.

I challenge any other Government agency or Department to match that level of performance who also :

- has to hire and train approximately 360 temporary workers
- use them only one or two days a year at most
- implement a new piece of equipment and process
- require them to work from 6 am in the morning until at least 8 pm their first day on the job and support over 12,000 customers

**Here is the main reason I am asking my fellow Commissioners to reconsider their vote on September 4<sup>th</sup> :**

- November's Presidential Election has only one ballot, it is not a Primary so there is no way the EPB's could cause a similar problem.
- EPB's would eliminate the Application Clerk step and allow us to redeploy 200-250 Workers as Precinct Registrars and COA Officers
- EPB's would help eliminate errors in Split Precincts – State House races
- Redistricting has confused some Voters – EPB will help that issue
- Early voting in Davidson County will probably be 200,000 – Election day – 100,000- 125,000
- Over 60,000 Davidson County Registered Voters are "Inactive" COA's if they all vote – 5 to 10 minutes additional work per COA
- We have over 40,000 Davidson County Registered Voters that did not receive their new Voter Registration Card – due to Voter moving without informing DCEC
- We should expect 500+ Provisional Ballot to be cast in November in Davidson County, it took the DCEC almost four hours to process and count 35 in August

**Please feel free to call me at [REDACTED] if you have any questions. Thank you in advance for your help on this complex issue.**

**Sincerely,**

**Steve Abernathy**

**Davidson County Commissioner**

**From:** Mark Goins [REDACTED]  
**Sent:** Thursday, September 13, 2012 10:08 AM  
**To:** Steve Abernathy  
**Cc:** [REDACTED]; Eddle Bryan;  
[REDACTED] Tom DuBois; [REDACTED]  
[REDACTED] Kathy Summers; Tieche, Albert (Elections)  
**Subject:** RE: Voter issues - Davidson County

Commissioner Abernathy,

It is my understanding that the Davidson County Election Commission is scheduled to consider the use of Electronic Poll Books during the November election at its meeting this afternoon. As we have discussed previously, I believe that the election commission made the right decision in deciding to suspend the use of the EPBs in November, and I do not recommend that you reverse that action.

The State Election Commission also discussed the issue at its meeting on Monday, August 10. Since learning of your desire to reconsider, I have spoken with both the Chairman and Secretary of the State Election Commission. We collectively concur that the Electronic Poll Books should not be used in November by Davidson County in place of paper poll books.

While we understand your desire to utilize this technology, the problems you experienced in August have raised sufficient concerns that we believe the best course would be to continue to utilize paper poll books for this election.

Sincerely,  
Mark Goins.

Mark Goins  
Coordinator of Elections  
312 Rosa L. Parks Ave., 9th Floor  
William R. Snodgrass Tower  
Nashville, TN 37243  
(615) 741-7956  
(615) 741-1278 (fax)

The mission of the Office of the Secretary of State is to exceed the expectations of our customers, the taxpayers, by operating at the highest levels of accuracy, cost-effectiveness, and accountability in a customer-centered environment.

## **General Election – Davidson County - November 6<sup>th</sup>, 2012**

### ***“The Perfect Storm”***

#### ***Several major issues hitting all at once***

- **Handout – 3 documents, summary of the items I plan to discuss, Quick fact sheet for this November Election, and a Bar graph showing hourly volumes of Voters**
- **1<sup>st</sup> test of Photo ID process with higher voter volume – March & August Primaries had 50k or less votes cast – Nov Election – 246k**
- **Becoming a Photo ID state required additional training for all Poll Workers to support the new process – Tennessee changed from a Signature State to Photo ID State - We only had 41 Orange Provisional ballots cast out of ¼ million voter**
- **1st major election since two Redistricting efforts, one for Metro Council & School board in 2011, and the last one completed April of 2012 for State house and State Senate seats - 84% of all Davidson County Voters had some type change (Precinct, Council District, School Board, State house, etc) Redistricting coming this close to a Presidential Election creates many opportunities for errors with little time to recover. This issue will not reoccur till 2032, 20 years from now**
- **In Davidson County we had over 52,000 Inactive Voters on the rolls at the end of October, plus another 40,000+ Voters that failed to receive their updated Voter Registration card due to address issues**

- We expected an increase on Change of Address forms – (COA's) this election – Why ? - The terrible flood that hit Nashville in 2010 and the worst recession in 50 years forced many families to relocate. Families forced to relocate under such stressful conditions, understandably put updating their Voter registration information as a low priority. We had an increase of 35% over 2008 run rate on Change of Address forms in the Precincts & Satellite COA sites.
- Green Provisional Ballots – no way to forecast which precinct they will be required because Voter in not in the Voter registration system
  - Green Prov – 580 processed, double the run rate in 2008. Only 179 were finally counted.
- Poll Workers – Yes, there were significant shortages of Poll Workers on Election Day – over 1300 were initially signed up and scheduled for training. 200 of them dropped out before Election day.
- 46 called within 72 hours after training was completed, and another 64 did not show up on Election Day

- **Unintended consequences**

- Former Chairman of the DCEC wrote a Letter to Editor – stating you must have a Signed Voter Registration card, or you can't vote - not true
- False statements in newspaper editorials stating that Poll workers weren't supposed to ask Voters to confirm their addresses – not true
- Metro Council bill that took effect in 2009 prohibiting Metro employees from working part time or temporary for other Metro agencies – Ray Barrett, the AOE at that time, talked about this during one of our Commission meeting in 2010 – warning us that this bill will cause us to lose 300 of our best Poll workers & Officers
- 3 years of 10% or larger Budget cuts by Metro hurt our effectiveness at Poll Worker recruiting & other critical functions

- **Even with all these issues impacting the DCEC team and the Election Process, they persevered and delivered a good election**

**Our Poll Workers and DCEC staff supported over 84,000 Davidson County voters in 162 Precincts on Election day, a 22% increase over 2008.**

- We expected long lines – primarily due to higher voter volume for a Presidential election and also five Metro charter amendments which tripled the time needed by Voters to complete their selections in the voting machines
- 140 of our Precincts had completed their Voting by 7:30 pm,
- 16 more finished by 8 pm, and the final Precinct completed voting at 8:55 pm, Charlotte Park School, which had 72 COA's.



- **Electronic Poll Books will help us even more in future Elections.**
    - **Reduce wait time for Voters by eliminating the Application clerk step in the process**
    - **Help Precinct Registrars more quickly identify when a Voter is in the wrong Precinct and provide them the address of the Precinct they will vote.**
    - **More importantly, the EPB will allow us to redeploy 200-250 Application Clerks as Change of Address Officers or additional Precinct Registrars**
  - **We are already working on some ideas for improvement to the Election Process in Davidson County and if you have the time and are interested, I will be glad to share some of those ideas. Also, I would be interested in hearing any ideas or suggestions you may have for improving the process.**
- 

- **Encourage car pooling for Poll Workers and Poll Watchers at the precinct to allow more parking spaces for Voters**
- **Preliminary discussions with Metro transit about arranging for bus transportation during Early Voting and on Election day for Poll Workers and possibly even Voters**
- **Ask our Politicians to do the same, have their Campaign workers on Election day and during Early voting car pool or have someone drop them off at the Precinct so more parking spots are available for Voters.**
- **Discussions with Congressman Jim Cooper's office about changing Temporary Poll Worker s wages so they will be exempt from Federal taxes.**
- **Working with Metro Payroll to develop a plan to pay our Poll Workers at the end of the evening, instead of 4 to 6 weeks after they work.**
- **Early Voting hours to start later in the day, 10 am, but run later at night, 7 pm to even 8 pm. Possibly work with Library locations to close the Library function at noon during Early Voting**

# EXHIBIT 5

## **Addressing Numbers Submitted Regarding Participating Voters - November 6, 2012 Election**

During the April 26, 2013 Special Called meeting of the Davidson County Election Commission, The Administrator was given a copy of a letter from State Election Coordinator Goins to Commissioner Jennifer Lawson in which The State Coordinator has asked for "how many voters voted in the November 6, 2012 election, and for a breakdown of numbers for House District 50 and 60". The letter also states that Davidson County has submitted seven different overall turnout numbers and two different numbers for House Districts 50 and 60.

Also attached to the letter was an expanded text of a page the Draft Review with brief descriptions of the different sets of numbers. To clarify the issues raised, this document will address each statement regarding numbers submitted by Davidson County. Also attached is document entitled "Discrepancies in November 6, 2012 votes in Layman's Terms".

1. "On a document dated November 26, 2012, the reported turnout was 246,517 voters."
  - a. These are the Certified Results. This number represents the total ballots cast in the November 6, 2012 election. The total of the ballots cast has not changed. The total in each race has not changed.
2. "A file generated on December 12, 2012, placed the total at 246,387."
  - a. This was an incorrect number of voter histories submitted on a disc that was generated on December 12, 2012. The errors were not discovered until March of 2013. A more detailed explanation of the errors and corrections is attached.
3. "Two days later (December 14, 2012) data was transferred showing a total of 246,383."
  - a. This was a standard state upload of voter histories. The errors in the system were not yet identified.
4. "A Certificate submitted on December 20, 2012 showed a total of 245,382."
  - a. This was the original submission of the Certificate of Early and Absentee Balloting (CEAB) report. This is an automated report of voter histories. After the report was submitted, DCEC learned there were voter posting errors that caused the report to be incorrect. Provisional votes were not included (and had never been included since the software was purchased) and there were 916 change-of-address votes improperly classified which prevented them from being included in the automated report. These errors have been corrected. A more detailed explanation is attached.
5. "Finally a report submitted on February 26, 2013, documented a total of 246,446."
  - a. This appears to be a submission to the State Coordinators Office of the federal Election Assistance Center's Election Administration and Voting Survey (EAVS) report. The information supplied to that report was pulled from the Voter Registration database

known as MegaProfile. This database contains voter registration information including posted voter histories. A more accurate source for this information would have been the Unity Election Results manager, the software that compiles the machine results. Using Unity to build the EAVS would have produced the Certified total balloting of 246,517. DCEC received an e-mail confirmation from Andrew Dodd at the State Coordinator's office that the EAVS report was acceptable. That e-mail is attached.

6. A corrected Certificate of Early and Absentee Balloting was submitted on March 27, 2013 and shows a total of 246,245 voters.
  - a. This corrected the CEAB report sent on December 20, 2012.
  - b. The corrected CEAB does not include the 171 posted provisional votes. The MegaProfile software must be changed by the vendor before provisional ballots can be included in the automated report.
  - c. Adding 171 posted provisional ballots gives a total of 246,416 voter histories. The Certified numbers are 246,517. This is accurate to 4/100s of 1 percent and is normal for a county of this size.
7. "A file updating data from December 14, 2012 shows a total of 246,415."
  - a. This is a subsequent state upload that was done after all corrections. It has 102 voter histories less than the certified 246,517 ballots cast. There was one additional duplicate discovered. This is a normal amount of difference for this county and represents less than 1 error per precinct. DCECs voter history matches the Certified election results to within 4/100s of 1 percent.

## Districts 50 and 60

In response to the State Coordinator's e-mail request of March 22, 2013, the Administrator e-mailed incorrect Election-Day totals from the voter registration database on March 27, 2013. Those numbers transmitted did not include votes cast in split precincts. Again, that was in error.

On April 29, 2013, DCEC ran a report from the voter registration database, to obtain the voter history of those people who voted in the House Districts 50 and 60 races including the votes cast in split precincts. The purpose is to compare the voter histories to the machine ballots cast as recorded on the Unity software system. The results are as follows:

|      | Nov. 26th<br>from Unity | Undervote | Total<br>from<br>Unity | Today<br>from<br>VRS | Variance |
|------|-------------------------|-----------|------------------------|----------------------|----------|
| SH50 | 8279                    | 868       | 9147                   | 9139                 | -8       |
| SH60 | 8726                    | 764       | 9490                   | 9547                 | 57       |

SH50 – Election day votes from the Unity system = 8279 per the November 26th report

Add 868 undervotes from these combined precincts and splits = 9147 ballots cast

\*Today's VRS reports 9139 – a variance of 8 attributable to changes in the VRS system

SH60 - Election day votes from the Unity system = 8726 per the November 26<sup>th</sup> report

Add 764 undervotes from these combined precincts and splits = 9490 ballots cast

\*Today's VRS reports 9490 – a variance of 57 attributable to changes in the VRS system

\*VRS changes with each COA, felon, death, precinct move etc.

## Reporting Capabilities of the Voter Registration Database

The DCEC VR database can only provide voter histories for those voters who currently reside in a given district. Any voter who participated in the November 6, 2012 but who is no longer registered in District 50 or 60 will no longer show up in voter histories for these House Districts. This happens when an individual has:

1. Changed their address of registration to another House District
2. Changed their address of registration to a location out of Davidson County
3. Been purged due to death or felony conviction

Davidson County's VR database was not designed to produce "as of" reports of voter histories. We cannot query the database for voter histories on a given date in the past. It will only produce up-to-date voter history reports. It is possible to contract with the vendor, ES&S to produce a voter history report on a given day. If that is required by the State Coordinator, DCEC will execute such a contract with ES&S.

Explanation of the discrepancy between the Certificate of Early and Absentee Balloting and the CD of voters participating in the November 6, 2012 election.

March 25, 2013

We discovered that there were two issues that caused the Certificate of Early and Absentee Balloting (CEAB) to show numbers that were different from the CD of those voters who participated in the November 6, 2012 election.

The CEAB is a report drawn from our Voter Registration database after each election. This report shows the number of votes cast for various categories of absentee voting such as those who were outside the county, those in the military, those who are on the permanent absentee list, etc. It also shows the number of Early Votes cast. This document is required to be filed with the State Coordinator of Elections after each election.

Each county using a computerized database is also required to file with the State Coordinator of elections a CD listing the names of every voter who participated in each election. Davidson County filed both items as required by law.

On March 20, 2013, the State Coordinator's office sent an e-mail alerting the Administrator of the Davidson County Election Commission to a discrepancy between the totals shown on the CEAB and the totals shown on the CD. On March 22, several staff members investigated the discrepancy. This investigation included a lengthy on-line session with ES&S technicians looking at the coding of reports drawn from our VR database.

Both the CEAB and the CD of those who participated are pulled from data recorded in the VR database. The first issue was a coding problem within the software of the VR database. The number of provisional ballots that were properly cast, counted and posted was being included in the CD of those who participated in the election but the software was not including the number in the CEAB report. This will require a software change in the VR database.

Also, change of address votes from the satellite CoA sites were improperly categorized by temporary staff to "Travel Board" when they were posted after the election. This is not a category that is used or needed in Davidson County. Again, this led to these voters being reported on the CD of those who participated but, these voters were not automatically included in the CEAB report. This categorization error was discovered and corrected on February 15, 2013. However, it was not known at the time that the category error caused these voters to be omitted from the CEAB, which was prepared on December 20, 2012. To prevent this error from occurring in the future, we have asked the database vendor, ES&S, to remove the unneeded "Travel Board" category from the database.

## **Cunningham, Thomas (Elections)**

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**From:** Andrew Dodd <Andrew.Dodd@tn.gov>  
**Sent:** Tuesday, February 26, 2013 3:07 PM  
**To:** Cunningham, Thomas (Elections)  
**Cc:** Tieche, Albert (Elections)  
**Subject:** RE: Emailing: TN\_EAVS\_DAVIDSON.xls

Looks good. The error check is showing up green and that's a good thing. Thanks for your work on this.

Andrew

-----Original Message-----

**From:** Cunningham, Thomas (Elections) [<mailto:Thomas.Cunningham@nashville.gov>]  
**Sent:** Tuesday, February 26, 2013 2:33 PM  
**To:** Andrew Dodd  
**Cc:** Tieche, Albert (Elections)  
**Subject:** Emailing: TN\_EAVS\_DAVIDSON.xls

Complete revisit of segments as requested - Please txt or call my cell at 615-517-1863 if you have any questions or concerns.

Kind regards,  
Tom

The message is ready to be sent with the following file or link attachments:

TN\_EAVS\_DAVIDSON.xls

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



# State House 50

Election Day Only

| District |   | Polling Location                       | Spill | Address                  | Police Cast On Machine | Variance | Notes - on over/under                                   | Net | Bal  | Charles Williamson | Bo Mitchell | Write-In | Over-Vote | Under-Vote | Total |
|----------|---|--|-------|--------------------------|------------------------|----------|---|-----|------|--------------------|-------------|----------|-----------|------------|-------|
| 01       | 1 | Joelton First Baptist                  |       | 7140 Whites Creek Pike   | 1081                   | 0        | 1081  | Yes | 551  | 394                | 5           | 0        | 131       | 1081       |       |
| 01       | 2 | Greenville UMC                         |       | 5892 Clarksville HWY     | 273                    | 0        | 273   | Yes | 131  | 103                | 0           | 0        | 39        | 273        |       |
| 01       | 4 | Scottsboro Comm. Ctr.                  |       | 5102 Old Hydes Ferry Pk  | 217                    | 0        | 217   | Yes | 106  | 83                 | 1           | 0        | 27        | 217        |       |
| 03       | 1 | Union Hill Baptist                     |       | 1301 Union Hill RD       | 457                    | 1        | 456 1 to 10-02  | No  | 265  | 132                | 3           | 0        | 57        | 457        |       |
| 03       | 2 | Joelton Elem School                    |       | 7141 Whites Creek Pk     | 82                     | 0        | 82 1 from 8-04 and 1 invalid address                    | Yes | 43   | 30                 | 0           | 0        | 9         | 82         |       |
| 03       | 6 | Northside Church of Christ             |       | 1375 Old Hickory Blvd    | 257                    | -1       | 258 ?   | -1  | No   | 30                 | 28          | 0        | 0         | 9          | 57    |
| 10       | 1 | Luton's UMC                            |       | 8383 Old Springfield Hwy | 281                    | 0        | 281   | Yes | 163  | 86                 | 0           | 0        | 32        | 281        |       |
| 10       | 2 | Walker Creek UMC                       |       | 2947 Lower Walkers Creek | 91                     | -1       | 92 1 from 3-01  | No  | 58   | 23                 | 0           | 0        | 10        | 91         |       |
| 10       | 3 | Goodlettsville Comm. Ctr.              |       | 200 Memorial Dr          | 448                    | -3       | 451 1 to 10-04  | -2  | No   | 216                | 188         | 1        | 0         | 43         | 448   |
| 10       | 4 | First Baptist Church of Goodlettsville |       | 613 S. Main St           | 635                    | -1       | 636 1 MOC'd 1 from 2-04 and 1 from 10-03                | No  | 197  | 221                | 2           | 0        | 57        | 477        |       |
| 10       | 6 | Rivergate Church of Christ             |       | 201 Alta Loma Rd         | 206                    | 1        | 205 1 to 8-01   | No  | 82   | 94                 | 0           | 0        | 30        | 206        |       |
| 22       | 1 | Bellevue Comm Ctr.                     |       | 656 Colice Jeanne Rd     | 459                    | -2       | 461 1 from 4-03, 1 from 21-01 and 1 from 22-03          | -1  | No   | 193                | 209         | 0        | 0         | 57         | 459   |
| 22       | 2 | Bellevue Church of Christ              |       | 7401 Hwy 70 S            | 918                    | 2        | 916 1 to 22-03, 2 from 22-03                            | -1  | No   | 298                | 351         | 1        | 0         | 48         | 598   |
| 22       | 3 | Bellevue Middle School                 |       | 655 Colice Jeanne Rd     | 647                    | 2        | 645 1 from 22-02, 2 to 22-02, 1 to 22-01 and 1 to 22-04 | 1   | No   | 262                | 321         | 0        | 0         | 64         | 647   |
| 22       | 4 | Bellevue UMC                           |       | 7501 Old Harding Pk      | 285                    | -1       | 286 1 from 22-03  | No  | 127  | 138                | 3           | 0        | 16        | 285        |       |
| 23       | 2 | West Meade School                      |       | 6641 Clearbrook Dr       | 831                    | 1        | 830 SEE AC Rpt  | No  | 151  | 205                | 0           | 0        | 29        | 385        |       |
| 23       | 3 | Jewish Community Ctr                   |       | 801 Perry Warner Blvd    | 632                    | 0        | 632   | Yes | 95   | 119                | 0           | 0        | 23        | 237        |       |
| 34       | 1 | Forest Hills Baptist                   |       | 2101 Old Hickory Blvd    | 465                    | -1       | 466 1 from 35-04  | No  | 117  | 141                | 0           | 0        | 20        | 278        |       |
| 35       | 1 | Gover School                           |       | 650 Old Hickory Blvd     | 684                    | 0        | 684   | Yes | 286  | 357                | 3           | 0        | 31        | 657        |       |
| 35       | 2 | South Harpeth Church of Christ         |       | 8727 old Harding         | 213                    | 0        | 213   | No  | 110  | 91                 | 0           | 0        | 12        | 213        |       |
| 35       | 3 | Harpeth Valley School                  |       | 7840 Old Harding Pk      | 965                    | -2       | 967 ?   | -2  | No   | 463                | 435         | 4        | 0         | 63         | 965   |
| 35       | 4 | Bellevue UMC                           |       | 7501 Old Harding Pk      | 643                    | 2        | 641 1 to 34-04 and 1 to 32-01                           | No  | 263  | 318                | 1           | 0        | 61        | 643        |       |
|          |   |  |       |                          | 10770                  | -3       | 10773   | -2  | 4207 | 4048               | 24          | 0        | 868       | 9147       |       |

# State House 60

Election Day Only

| District | Precinct | Split | Polling Location                 | Address               | Ballots Cast On Machine |                      |                      | Notes - on over/under           | Net | Jim Gatto | Write-In | Over Vote | Under Vote | Total |      |      |
|----------|----------|-------|----------------------------------|-----------------------|-------------------------|----------------------|----------------------|---------------------------------|-----|-----------|----------|-----------|------------|-------|------|------|
|          |          |       |                                  |                       | Variance                | Yotes Credited to VR | Yotes Credited to VR |                                 |     |           |          |           |            |       |      |      |
| 11       | 2        |       | Andrew Jackson School            | 110 Shute Ln          | 792                     | 0                    | 792                  |                                 | Yes | 373       | 370      | 1         | 0          | 48    | 792  |      |
| 11       | 3        |       | Temple Baptist Church / Lakewood | 110 Fellowship Lane   | 339                     | 0                    | 339                  |                                 | Yes | 156       | 162      | 0         | 0          | 21    | 339  |      |
| 11       | 4        |       | DuPont-Tyler Middle School       | 431 Tyler Dr          | 375                     | 3                    | 378                  | 1 to 12-03 and 1 not registered | 5   | 169       | 171      | 1         | 0          | 34    | 375  |      |
| 12       | 1        |       | Hermitage Presby Church          | 421 Highland View Dr  | 604                     | -1                   | 603                  | 1 MOC'd                         | No  | 252       | 304      | 2         | 0          | 46    | 604  |      |
| 12       | 2        |       | Ruby Major School                | 5141 John Hager Rd    | 908                     | -1                   | 907                  | 1 MOC'd                         | No  | 496       | 352      | 2         | 0          | 58    | 908  |      |
| 12       | 3        |       | DuPont-Tyler Middle School       | 431 Tyler Dr          | 446                     | 1                    | 447                  | 1 from 11-04                    | No  | 187       | 226      | 0         | 0          | 33    | 446  |      |
| 12       | 4        |       | Central Pike Church of Christ    | 4240 Central Pike     | 562                     | -1                   | 561                  | ?                               | No  | 280       | 251      | 0         | 0          | 31    | 562  |      |
| 13       | 4        |       | Whitworth Baptist                | 3014 Elm Hill Pike    | 81                      | 1                    | 82                   | 1 from 13-03                    | No  | 32        | 37       | 0         | 0          | 12    | 81   |      |
| 14       | 1        |       | Hermitage Hills Baptist          | 3475 Lebanon Rd       | 703                     | 0                    | 703                  | 1 from 14-02                    | -1  | Yes       | 300      | 341       | 0          | 0     | 62   | 703  |
| 14       | 2        |       | Hermitage School                 | 3800 Plantation Dr    | 800                     | -2                   | 798                  | 1 to 14-01                      | -1  | No        | 380      | 355       | 1          | 0     | 64   | 800  |
| 14       | 4        |       | Hermitage First Baptist Church   | 3824 Central Pike     | 26                      | 0                    | 26                   |                                 | Yes | 14        | 10       | 0         | 0          | 2     | 26   |      |
| 14       | 5        |       | Tenn. School for the Blind       | 115 Stewarts Ferry Pk | 753                     | 0                    | 753                  |                                 | Yes | 322       | 356      | 3         | 0          | 72    | 753  |      |
| 15       | 1        | 2     | Two Rivers School                | 2991 McGavock Pk      | 1044                    | -2                   | 1042                 | 1 walkout                       | -1  | No        | 476      | 456       | 2          | 0     | 87   | 1021 |
| 15       | 2        |       | Donelson Heights UMC             | 84 Fairway Dr         | 685                     | -2                   | 683                  | ?                               | -2  | No        | 361      | 261       | 1          | 0     | 62   | 685  |
| 15       | 3        |       | Donelson Pres. Church            | 2305 Lebanon Pk       | 775                     | 0                    | 775                  |                                 | Yes | 340       | 347      | 1         | 0          | 87    | 775  |      |
| 15       | 4        |       | Margaret Allen School            | 500 Spence Ln         | 439                     | 0                    | 439                  |                                 | Yes | 180       | 221      | 3         | 0          | 35    | 439  |      |
| 33       | 1        |       | Eagle Christian Church           | 1795 Bakers Grove Rd  | 181                     | 0                    | 181                  |                                 | Yes | 133       | 38       | 0         | 0          | 10    | 181  |      |
|          |          |       |                                  |                       | 9513                    | -4                   | 9509                 |                                 | 0   | 4451      | 4258     | 17        | 0          | 764   | 9490 |      |